

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement” hereinafter) dated November _____, 2008 is entered into by and among Sober Living by the Sea, Inc. (“Sober Living” hereinafter), F.G., an anonymously named individual, J.W., an anonymously named individual S.B., an anonymously named individual, and B.H., an anonymously named individual (hereinafter, Sober Living and said four anonymously named individuals are collectively referred to as “Claimants”) and the City of Newport Beach, a charter city and municipal corporation, and Edward D. Selich, Leslie J. Daigle, Michael L. Henn, Steven Rosansky, Don Webb, Nancy Gardner and Keith D. Curry, in their capacity as members of City’s City Council (collectively referred to as “City” hereinafter). Claimants and City are collectively referred to as “Parties.” This Agreement is entered into in reference to the following Recitals which Parties agree are accurate to the best of their knowledge or belief.

RECITALS

A. On February 13, 2007, City’s Council adopted its Resolution No. 2007-10, initiating an amendment to Title 20 of City’s Municipal Code to revise land use classifications and definitions related to group residential uses.

B. On April 24, 2007, City’s Council adopted its Ordinance 2007-8 which imposed a temporary moratorium on the establishment of most new group residential uses and directed the City’s Planning Department, in cooperation with the City Attorney, to analyze the extent and effectiveness of regulatory controls affecting group residential uses.

C. The period of the moratorium referred to in Recital B above was extended by City’s Council’s Ordinance Nos. 2007-10 and 2007-16 and was for the most part superseded by the provisions of Ordinance No. 2008-05 discussed below.

D. On January 8, 2008, City’s Council conducted a public hearing on a proposed ordinance modifying City’s code provisions regulating group residential uses in the City and, thereafter, conducted first reading of Ordinance No. 2008-05.

E. On January 22, 2008, City’s Council passed Ordinance No. 2008-05, which, among other things, included provisions requiring then current operators of certain residential care facilities (defined in the Ordinance) in R-1, R-1.5 and R-2 Zones to obtain use permits to continue those operations at those locations or seek alternate forms of relief provided in the Ordinance or abate those operations within defined time periods.

F. Sober Living is a California Corporation and an indirect wholly-owned subsidiary of CRC Health Group, Inc., a Delaware Corporation.

G. City of Newport Beach is a municipal corporation and Charter City under the laws of the State of California.

H. At the time of the passage of City’s Ordinance No. 2008-05 Sober Living operated alcoholism and drug abuse treatment and recovery facilities licensed by the California Department of Alcohol and Drug Programs (“ADP”) (the “Licensed Facilities”) and non-treatment residential facilities not required to be licensed (“Sober Living Homes”). The ADP-licensed treatment facilities are hereinafter referred to as Licensed Facilities and the non-licensed non-treatment facilities are referred to as Sober Living Homes. Sober Living was operating these

Licensed Facilities and Sober Living Homes in residential and Specific Plan zones in that area of City described as the Peninsula, Lido Isle, West Newport and Newport Shores (the "Peninsula Zone" as shown on **Exhibit A**). Sober Living had the capacity to house 238 clients in that area at one time during 2007. "Facility" or "Facilities" means 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.

I. On February 22, 2008, Claimants filed an action entitled *Sober Living By The Sea, Inc., et al. v. City of Newport Beach, a municipal corporation, et al.*, United States District Court, Central District of California, Case No. SACV08-00200 JVS (RNBx) ("the Action" hereinafter), asserting, among other things, that Ordinance No. 2008-05 discriminated against Claimants on its face, violated State of California and federal housing laws and monetarily damaged Sober Living's property interests. City has denied and continues to deny all such assertions and allegations and has asserted and continues to assert that Ordinance No. 2008-05 is not discriminatory and does not violate any state or federal law.

J. In the context of the Action, Claimants filed a motion for the issuance of a preliminary injunction precluding City from applying the provisions of Ordinance 2008-05 to Claimants. That motion was granted in part and denied in part,. Claimants have filed a notice of appeal pertaining to that portion of the Court's ruling denying their motion for a preliminary injunction.

K. Sober Living has filed with City and there are now pending nineteen (19) use permit applications seeking to continue operations of some of its Facilities.

L. Sober Living also filed a complaint with the U.S. Department of Housing and Urban Development, asserting among other things, that Ordinance No. 2008-05 violates federal housing laws ("H.U.D. Complaint" hereinafter). City has responded by denying all such allegations and providing H.U.D. with materials pertaining to the passage of Ordinance No. 2008-05. The H.U.D. Complaint has been forwarded to the United States Department of Justice for further action.

M. The Parties have engaged in a mediation process concerning the circumstances described hereinabove and, as a result thereof, now desire to resolve all of the issues raised in the Action and the H.U.D. Complaint and enter into this Agreement, to FINALLY, FULLY, COMPREHENSIVELY AND CONCLUSIVELY settle the Action and to request of the Department of Justice that no further action be taken on the H.U.D. Complaint as well as all underlying and related contentions and allegations, by and through the passage of an ordinance which would approve a Zoning Implementation and Public Benefit Agreement ("Zoning Agreement" hereinafter) substantially identical to that document attached hereto as **Exhibit B**. The Parties understand that the approval of the Zoning Agreement is subject to the:

- (i) Conduct of public hearings required by law and the open and unbiased application of City's police powers to its Planning Commission's and its Council's consideration of that approval; the
- (ii) Referendum power of the City's electorate, and a
- (iii) Legal challenge by any interested party.

N. This Agreement permits Sober Living to operate up to 156 beds for Licensed Facilities or Sober Living Homes in the Peninsula Zone and, upon dispersion of the 156 beds per the Zoning Agreement up to an additional 48 beds of such facilities in those areas of the city outside of the Peninsula Zone and zoned for multi-family residential purposes or any other zones permitting multiple residential use pursuant to the Zoning Agreement.

O. Sober Living's operations of the aforesaid Licensed Facilities and Sober Living Homes are to be governed by the Zoning Agreement, when it becomes effective.

NOW, THEREFORE, in consideration of the above Recitals, covenants and agreements therein, the Parties agree as follows:

SETTLEMENT

1. DEFINITIONS.

As used herein, the term "Claims" means all claims, charges, liabilities, damages, obligations, costs, expenses (including without limitation attorneys' fees), rights of action and causes of action of any kind, legal or equitable, whether known or unknown, anticipated or unanticipated, past, present or future, contingent or fixed, existing, claimed to exist or which may hereafter exist under the United States Constitution, the California Constitution, applicable common law, contract, tort or other federal, state, local, or municipal law or regulation, relating in any way to the facts and circumstances that give rise to the Action and the H.U.D. Complaint, whether said facts and circumstances occurred prior to or after the filing of the Action or the H.U.D. Complaint.

2. REPRESENTATIONS AND WARRANTIES.

A. Each party hereby represents and warrants that:

(i) It has the power and authority to enter this Agreement and the attached Zoning Agreement.

(ii) None of the Claims released hereunder have been in the past or will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

B. The Claimants hereby agree that they shall indemnify and defend and hold the City and its elected and appointed officials, boards, commissions, officers, agents, attorneys, representative, and employees, harmless from any and all liability, loss, expense, damage, or claims which may arise directly or indirectly from or in connection with any allegation that the warranties and representations made in this section are false and/or for the breach of any of the terms and conditions of this section.

C. City hereby agrees that it shall indemnify and defend and hold harmless Claimants and their officers, agents, attorneys, representatives and employees harmless from any and all liability, claims, expense, damage, or claims which may arise directly or indirectly from or in connection with any obligation that the warranties and registrations made by City on their side are false and/or for the breach of any of the terms and conditions of this section.

D. Nothing herein shall be deemed as a waiver or release of the warranties, representations, rights and obligations as set forth in this section.

3. TERMS OF SETTLEMENT.

A. City Obligations.

(i) Nothing in this Agreement is intended to or shall have the lawful effect of contracting away the City's zoning authority or any other aspect of the City's police power. City Staff and the City Council have previously reviewed the terms and conditions of the Zoning Agreement, and have concluded that pursuant to the State law and the City Municipal Code, City Staff may lawfully present the Zoning Agreement to the City's Planning Commission and City Council for approval or disapproval, subject to duly noticed hearings. City Staff has further preliminarily concluded that no CEQA analysis shall be required to be completed prior to the City considering approval of the Zoning Agreement.

(ii) The City shall schedule public hearings on the ordinance which, if adopted, would approve the Zoning Agreement. If the City Council fails to approve the ordinance within thirty (30) days following conclusion of the public hearings thereon, this Agreement shall be of no further force or effect on the thirty-first (31st) day.

(iii) At City's sole and absolute discretion, City shall timely file a Notice of Determination, Notice of Exemption, or other appropriate CEQA notice if the ordinance approving the Zoning Agreement is passed, and shall pay the cost of any environmental assessment, negative declaration or environmental impact report that is determined to be required.

B. Claimants' Obligations.

(i) Claimants and each of Claimants' agents shall not oppose the City's approval of the Zoning Agreement and shall support, both verbally and in writing, if requested by the City, the City's approval of the Zoning Agreement ("Support Covenant").

(ii) Claimants shall not file any lawsuits, administrative appeals pursuant to the City's Municipal Code, or take any other action whatsoever, in whatever shape or form, to challenge, appeal, or otherwise seek to influence in any respect, approval of the Zoning Agreement, with the sole exception of the Support Covenant as set forth in the immediate preceding Paragraph 3B(i), unless it is necessary to support or defend the validity of the Zoning Agreement or this Agreement.

(iii) Claimants shall notify HUD and DOJ in writing that the lawsuit has been stayed pending the processing of a potential settlement.

C. General Obligations of All Parties.

The Parties will use their best efforts and cooperate as necessary in performing and implementing this Agreement in good faith.

4. GENERAL RELEASE.

A. General Release and Discharge of Claims by Claimants. Upon the Effective Date of this Agreement, Claimants, and each of them, for themselves and all of their predecessors, successors, assigns, representatives, attorneys, employees, officers, and agents, do hereby fully and forever release and discharge the City, and all of its predecessors, successors, assigns, representatives, attorneys, agents, elective and appointive council members, council boards, commissions, commissioners, officers, employees (hereinafter collectively all persons and entities will be referred to as "City Released Persons"), of and from any and all actions, Claims, demands, rights, damages, costs, litigation expenses, attorneys fees, expert fees, consultant fees, other fees, interest, lost profits and earnings, diminution in the value of the business, loss of past, current, future and subsequent business and patronage, the value of the leasehold interest, the loss of goodwill, any inverse condemnation claims, any claims for the taking of property, any other damages, costs or expenses arising from any and all actions of the City Released Persons and compensation of any nature whatsoever, which claimants have or may hereafter accrue, including without limitation, any and all known and unknown, foreseen and unforeseen claim, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the Action or the H.U.D. Complaint.

B. General Release and Discharge of Claims by City. Upon the Effective Date of this Agreement, City, and each of them, for themselves and all of their predecessors, successors, assigns, representatives, attorneys, employees, officers, and agents, elective and appointive council members, council boards, commissions, and commissioners do hereby fully and forever release and discharge the Claimants, and all of their predecessors, successors, assigns, representatives, attorneys, agents, officers, directors and employees (hereinafter collectively all persons and entities will be referred to as "Released Persons"), of and from any and all actions, claims, demands, rights, damages, costs, litigation expenses, attorneys fees, expert fees, consultant fees, other fees, interest, lost profits and earnings, any other damages, costs of expenses arising from any and all actions of the Released Persons and compensation of any nature whatsoever, which they have or may hereafter accrue, including without limitation, any and all known and unknown, foreseen and unforeseen claim, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the Action or the H.U.D. Complaint.

C. Waiver of Claims. It is the intention of the Parties, in executing this Agreement and receiving the consideration recited herein, that this Agreement will be effective as a full and final accord and satisfaction and general release of all Claims, debts, damages, liabilities, demands, obligations, costs, expenses, disputes, actions or causes of action, that the Parties may have against each other by reason of any acts, circumstances or transactions relating in any way to the Action or the H.U.D. Complaint and occurring before the date of this Agreement. In furtherance of this intention, the Parties hereby acknowledge that they are familiar with California Civil Code §1542 and that they hereby expressly waive the protection of that section, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties each waive and relinquish any right or benefit that they have or may have under California Civil Code §1542. That is, the Parties shall not invoke the benefits of California Civil Code §1542, or any such similar law, to prosecute any Claims released hereunder. In connection with such waiver and agreement, each of the Parties acknowledge that they are aware that they or their attorney may hereafter discover Claims or facts or legal theories in addition to or different from those which they know or believe to exist with respect to the Action or H.U.D. Complaint, but that it is the intention hereby to fully, finally, and forever settle and release all of the Claims, known or unknown, suspected or unsuspected, which do now exist, may exist, or heretofore have existed by reason of any acts, circumstances, facts, events, or transactions relating in any way to the Action or the H.U.D. Complaint before the date of this Agreement. It is expressly acknowledged and understood by the Parties to this Agreement that the Parties separately bargained for the foregoing waiver of the provisions of §1542 of the California Civil Code. The Parties consent that this release shall be given full force and effect in accordance with each and all of the express terms and provisions, including those terms and provisions related to such unknown and unsuspected claims, demands, and causes of action relating in any way to or arising out of the facts and circumstances underlying or connected with the Action or the H.U.D. Complaint.

D. Representations and Warranties. Each Party represents and warrants to the other that, except as otherwise expressly provided in this Agreement, they are not relying on any representation whatsoever, whether express or implied, including without limitation, representations of fact or opinion made by or on behalf of the Parties herein.

5. DISMISSAL OF THE ACTION AND WITHDRAWAL OF SUPPORT OF THE H.U.D. COMPLAINT.

Within five business days after the Effective Date, as defined below, Sober Living shall take the following actions:

A. Sober Living shall dismiss the Action in its entirety without prejudice and shall dismiss or abandon without prejudice the appeal taken from the order partially granting and partially denying Sober Living's motion for a preliminary injunction; and

B. Sober Living shall, affirmatively request that H.U.D. and the United States Department of Justice take no further action based upon the HUD complaint. Should a federal process continue thereafter, Sober Living shall participate therein only to the extent required by law.

In the event that litigation is instituted to challenge this Agreement or the Zoning Agreement on a date subsequent to the Effective Date and that litigation results in this Agreement or the Zoning Agreement being finally held to be invalid by the entry of Judgment by a Court of competent jurisdiction after the exhaustion of all available appeals and petitions, Sober Living shall be afforded the opportunity within 90 days of the date of entry of that Judgment to refile the Action, to begin fully participating in the processing of the H.U.D. Complaint or file a new complaint with H.U.D. and to recommence the processing of use permit applications without being impeded in any way by the passage of time from the date of City's Council's approval of this Agreement to the expiration of said 90 day period.

6. EFFECTIVE DATE OF AGREEMENT

This Agreement shall not become effective, and except as set forth in Subsection C of this Section 6 and Section 7, neither party shall have any rights or obligations hereunder until the “Effective Date,”

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

i. The 91st day after the City Council’s passage of the ordinance approving this Agreement, or

ii. If a referendum or other elective challenge to the ordinance approving this 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 Agreement prior to the Effective Date, established in accordance with 6.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 Agreement (the “Term”) shall commence on the Effective Date and shall expire at the conclusion of the 25th year thereafter.

C. Stay of Ordinance 2008-05 Pending Effective Date. Prior to the effective date of the ordinance adopting this 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.

7. ACTIONS PENDING EFFECTIVENESS OF THIS AGREEMENT

The Parties agree that prior to the Effective Date, the Parties shall jointly seek to maintain stays of the Action, both in the Appellate and District courts. During this same period of time: (i) Claimants shall not take any action to affirmatively cause the HUD Complaint to be prosecuted; (ii) City shall not enforce any provision of Ordinance No. 2008-05 against Claimants; (iii) Sober Living shall agree to abide by the terms of Exhibit B to the Zoning Agreement within 30 days after execution of this Agreement.

8. MISCELLANEOUS PROVISIONS.

A. This Agreement shall be governed and interpreted in accordance with the laws of the State of California. Each party hereto agrees that the laws of the State of California shall apply and that any action brought hereunder shall be subject to the laws and statutes of the State of California except as expressly provided for in the Zoning Agreement. The venue of any legal challenge to this Agreement or the Zoning Agreement shall be the Superior Court of California for Orange County or the United States District Court for the Central District of California – Southern Division.

B. Integrated Agreement. This Agreement and the exhibits attached hereto contain the entire understanding and agreement between the Parties. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written,

respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties hereto. The Parties hereto acknowledge that this Agreement has been executed without reliance upon any such promise, representation, or warranty not contained herein.

C. Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Parties.

D. Binding on Successors. This Agreement and the covenants and conditions contained herein shall obligate, bind, extend to and inure to the benefit of the Parties and each of their respective successors in interest, including, but not limited to, their administrators, executors, owners, partners, officers, directors, shareholders, legal representatives, assignees, attorneys, successors, and agents or employees of the Parties hereto. Prior to assigning any rights or obligations Claimants have with respect to this Agreement and the Zoning Agreement to a third party, Claimants shall obtain written confirmation and deliver to City that such assignee shall be bound by the terms of this Agreement and that such Assignee shall also be entitled to receive the benefits of this Agreement and the Zoning Agreement.

E. Representation. The Parties affirmatively represent that they have been represented by counsel of their own choosing. They have read this Agreement and have had the terms used herein and the consequences thereof explained by their attorneys of choice.

F. Construction. This Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties jointly prepared this Agreement. Any uncertainty and ambiguity shall not be interpreted against any one Party. Language in all parts of the Agreement shall be in all cases construed as a whole according to its plain meaning.

G. Attorneys' Fees and Costs. All attorneys' fees, expert fees and costs incurred through the date of this Agreement that relate in any way to the Action, the H.U.D. Complaint or the Zoning Agreement, the negotiation or preparation of this Agreement or any action called for herein, shall be borne by the respective Parties and each Party agrees to waive any claim, or claims, against any of the other Parties for the reimbursement of all, or any portion of said fees or costs. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and related costs.

H. No Admission of Liability. This Agreement and the releases contained herein and the consideration referred to herein are done to save litigation expense and to effect the compromise and settlement of claims and defenses which are denied, disputed, and contested. Nothing contained herein shall be construed as an admission by any Party of any liability of any kind to any other Party. The Parties agree that each Party expressly denies that it is in any way liable or indebted to any other Party and no person interpreting this Agreement shall be able to infer that any Party has engaged in any conduct giving rise to liability to any other Party.

I. Gender Neutral. Whenever in this Agreement the context may so require, the masculine, feminine and neutral genders shall be each deemed to include the other and the singular and the plural shall refer to one another.

J. Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and all of which shall constitute an agreement to be effective as of the date of signing. Further, signatures transmitted and memorialized by facsimile shall be deemed to have the same weight and effect as an original signature. The Parties may agree that an original signature will be substituted at some later time for any facsimile signature.

K. Captions and Interpretations. The paragraph titles and captions are inserted in this Agreement as a matter of convenience. As such, the paragraph titles or captions are not intended to define or describe the scope of any provision.

L. Invalid Clause May Be Severed. If any provision, clause, or part of the Agreement is adjudged illegal, invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

M. Survival of Warranties and Representatives. The warranties and representations made in this Agreement are deemed to survive the execution of this Agreement.

N. Conflict. In the event of conflict between this Agreement and the attaching Zoning Agreement, the latter shall prevail.

O. BY SIGNING THIS AGREEMENT, THE PARTIES CERTIFY THAT THEY HAVE READ IT, THAT THEY HAVE CONSULTED WITH THEIR LEGAL COUNSEL ABOUT ITS EFFECT, AND THAT THEY FULLY UNDERSTAND IT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written and their attorneys have indicated their approval as to form by their respective signatures in the appropriate spaces below.

[SIGNATURES ON FOLLOWING PAGES]

CLAIMANTS:

SOBER LIVING BY THE SEA, INC.

By: _____
Name

Title

Dated: _____

BURKE, WILLIAMS AND SORENSEN LLP
ATTORNEYS FOR CLAIMANTS
ON BEHALF OF F.G., J.W., S.B. AND B.H.

By: _____
Richard Terzian

Dated: _____

CITY OF NEWPORT BEACH, CITY COUNCIL

By: _____
Edward D. Selich, Mayor

Dated: _____

ATTEST:

By: _____
LaVonne Harkless, City Clerk

Dated: _____

APPROVED AS TO FORM:
CITY OF NEWPORT BEACH

By: _____
Robin L. Clauson, City Attorney

Dated: _____

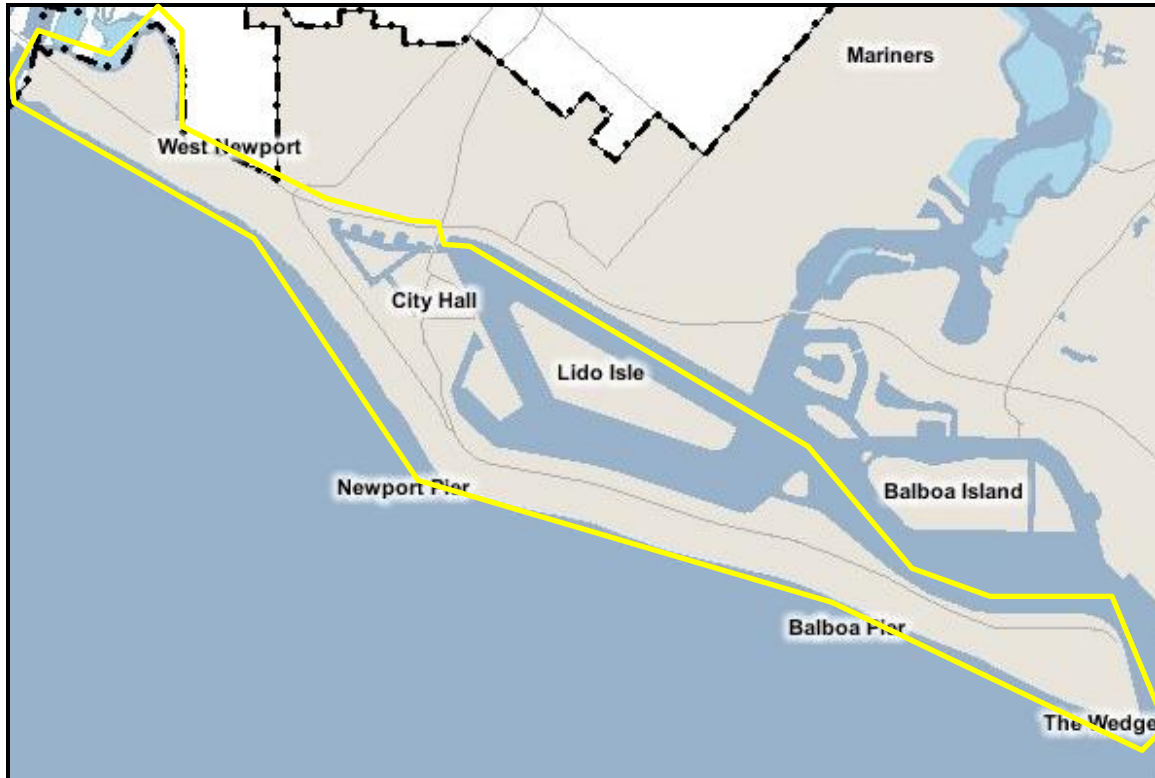
By: _____
James L. Markman, Special Counsel
for the City of Newport Beach

Dated: _____

Exhibit A
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 B
Zoning Implementation and Public Benefit Agreement

(see "Zoning Agreement" on website)