RESOLUTION NO. HO-2009-015

A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING A REQUEST FOR REASONABLE ACCOMMODATION FOR A RESIDENTIAL CARE FACILITY LOCATED AT 124 30TH STREET AND OPERATED BY BALBOA RECOVERY, INC (PA 2009-012)

WHEREAS, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

WHEREAS, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

WHEREAS, Ordinance No. 2008-05 added Chapter 20.98 to the NBMC. Chapter 20.98 sets forth a process to provide reasonable accommodation in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling; and

WHEREAS, an application was filed by Kevin Cullen, on behalf of Balboa Recovery Inc., with respect to property located at 124 30th Street, and legally described as Newport Beach City BLK 29 Lot 18 TR 512; and

WHEREAS, a public hearing was held on May 20, 2009, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Municipal Code and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

WHEREAS, the required findings of Section 20.98.025(B) of the NBMC and facts in support of such findings are as follows:

1. **Finding: The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.**

   Facts in support of finding: Balboa Recovery Inc., submitted a statement signed under penalty of perjury that every resident of the facility is in recovery from alcohol and/or drug addiction. Federal regulations and case law have defined recovery from alcoholism and drug addiction as a disability, because it is a physical or mental condition that substantially impairs one or more major daily life activities.

2. **Finding: The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.**

Facts in support of finding as to current residents: As this facility is a nonconforming use in a residential district and the applicant did not apply for or receive a use permit within the time period designated by Ordinance No. 2008-05, it is currently subject to abatement if a reasonable accommodation is not granted. If the facility is abated current residents will lose the opportunity to live in their current dwelling for the intended duration of their stay. Granting the accommodation allowing all current residents to complete their intended stay is necessary to allow these residents an equal opportunity to use and enjoy their current dwelling.

Facts do not support finding as to prospective residents, at the population level requested by the applicant. Balboa Recovery Inc. has requested accommodation for 10 residents at this location and argued that it was necessary to continue to operate in both units due to concerns about mixing recovery and certain non-recovery uses in the same building. Staff recognizes that control of the entire building may be in the best interest of the resident clients, but notes a similar tenant scenario may occur in adjacent or surrounding properties that would not be in the control of the applicant. This particular area has residential units in close proximity to one another with minimal setbacks of three feet.

Balboa Recovery has not submitted any information that would demonstrate that prospective residents of the facility will receive any greater therapeutic benefit from a facility with more than six residents.

Balboa Recovery states that because of the costs associated with this particular facility, operating the facility with fewer than the requested 10 residents is not financially feasible. Instead of requesting that the Hearing Officer review evidence of financial necessity and grant the requested accommodation with a resident population in excess of the six residents recommended by staff, the applicant has requested an extended abatement period. The Hearing Officer finds that a 12-month abatement period is a reasonable period of time to allow current clients to complete their stays and for Balboa Recovery to identify alternate facility locations. The Hearing Officer finds that the City should enter an abatement agreement with the applicant, and that during the abatement period the applicant must operate the facility in accordance with the conditions attached hereto as Exhibit A.

NBMC Section 20.98.025(C) also allows the City to consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

If accommodation is granted, current and potential clients of Balboa Recovery Inc. clients will be able to live in a dwelling in an R-2 District with other individuals in

recovery from addiction. Disabled residents would have an opportunity to live in a safe and sober, supportive, residential setting offering a self-paced recovery which allows residents to reintegrate into the world and workforce. This is a situation that can affirmatively enhance the quality of life of a person in recovery from addiction, unless overcrowding of the facility or institutionalization of the neighborhood interferes with the residents' re-integration into society. This facility appears to be the only residential care facility of any description on this block, or any of the adjacent blocks.

Even though current residents are probably benefited by staying in their current sober living environment for the duration of their intended stay, the applicant has not submitted any information that would demonstrate that prospective residents of the facility will receive any greater therapeutic benefit from a facility with more than six residents.

B. *Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

As to current residents: Balboa Recovery Inc. is requesting an exemption from the requirements of NBMC Section 20.10.020, to allow the continued operation of an existing unlicensed residential care facility located in an R-2 District, where the NBMC permits such uses only in an MFR District with approval of a use permit. As a prohibited use, the facility is subject to abatement. Balboa Recovery seeks to continue to house up to 10 disabled individuals in two units of a duplex building. The facility currently houses residents who could be denied housing if abatement proceeds while they are still in residence at the facility.

As to prospective residents: Staff recommended a condition of approval limiting the maximum occupancy of the facility to six resident clients in the building based on a staff finding that while there was a significant supply of alternate available residential recovery housing options serving seven to 12 residents in two units of a duplex. As discussed above, the applicant preferred to abate this facility rather than operate it at the population level recommended by staff.

C. *In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

Balboa Recovery Inc. has not provided adequate evidence or information clearly demonstrating that the size or type of facility requested is necessary for the facility's financial viability. The information that has been provided by the applicant does not clearly state why exemption from the Residential District Land Use Regulations requirements is necessary to make its facilities viable in light of the current market for the type of services it provides. Balboa Recovery Inc. contends that closing or

relocation of the facility would be a significant financial burden. Balboa Recovery Inc. has provided financial information regarding expenses and revenues, however, the information has not been verified by evidence of expenses, such as lease agreements and utility bills.

For this reason, the Hearing Officer is unable to conclude that granting the exemption to allow the continued use in the R-2 District at the population level of ten (10) residents by Balboa Recovery Inc. is necessary to make the facility financially viable, and is unable to analyze whether a particular number of residents in excess of six (6) is required to make the facility financially viable. However, as discussed above, Balboa Recovery has proposed an abatement solution which the Hearing Officer determined was an acceptable solution to Balboa Recovery's financial viability concerns.

D. *In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

The Municipal Code authorizes the City to consider the existence of other facilities that are of a "similar nature and operation" within the City. Based on an inventory conducted in April 2009, persons wishing to live in Newport Beach in an unlicensed sober living environment unaffiliated with a formal treatment program have the following housing opportunities that they can choose from:

- 4 beds at 900 West Balboa (operated by LMS Recovery, with reasonable accommodation issued to LMS Properties for as long as LMS Recovery operates the beds in accordance with the terms of the reasonable accommodation); and
- An undetermined number of beds at 494 and 492 Orange Street and 3309 Clay Street (operated by Pacific Shores Recovery, reasonable accommodation denied, subject to appeal and abatement); and
- 6 beds at 204 21st Street (operated by Balboa Recovery, with reasonable accommodation issued to Balboa Recovery for as long as Balboa Recovery operates the beds in accordance with the terms of the reasonable accommodation); and
- An unlimited number of beds via the use of any home in Newport Beach provided that the occupants reside there as a single housekeeping unit in compliance with the City's definition of a single housekeeping unit.

There are also sober livings beds affiliated with a formal treatment program, Sober Living by the Sea (SLBTS), which are approved and not subject to abatement. For individuals who wish to reside in a duplex occupied entirely by sober living residents, 60 beds (located in both units of five duplexes) will remain in their current location. Twenty-four additional beds (located in both units of two duplexes) are currently in operation but plan to close within 30 months, under the terms of the Zoning Agreement

between the City and SLBTS. SLBTS also operates six beds in one unit of a duplex, also due to close within 30 months.

A denial of the reasonable accommodation would not deprive prospective residents of the opportunity of live in a residential setting with seven to 12 individuals in recovery in two units of a duplex building. The alternate residential settings also provide self-paced recovery options that allow residents sufficient time for personal psychological growth while avoiding the use of alcohol and other substances.

3. **Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City asundue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.**

Facts in support of finding: Allowing the facility to remain at its current location so long as it is necessary to provide disabled individuals with an equal opportunity to use and enjoy a dwelling would not impose an undue financial or administrative burden on the City. To date, there have been no complaints made to the City regarding the operations of this facility.

4. **Finding: That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.**

Facts in support of findings, as to current residents: Allowing current residents to remain at the facility for the duration of their intended stay does not result in a fundamental alteration of the City's zoning program. The applicant reports an average client stay of 300 days. As current residents complete their intended stays and leave the facility, the facility will reach the population limit approved by the Hearing Officer through attrition. A limited stay of more than six resident clients during this period will not fundamentally undermine the purposes of any portion of the Zoning Code.

Facts do not support the finding, as to prospective residents at the population level requested by the applicant.

Zoning District Consideration: NBMC Section 20.10.010 sets forth the basic purposes for establishing zoning districts which include locating residential development in areas which are consistent with the General Plan and with standards of public health and safety established by the Municipal Code, ensuring adequate light, air and privacy for each dwelling, protecting residents from the harmful effects of excessive noise, population density, traffic congestion and other adverse environmental effects, and providing public services and facilities to accommodate planned population and densities. The specific purpose of Section 20.10.010 of the NBMC for the R-2 District is that the district provide "areas for single-family and two-family residential land uses." The specific purpose of the Multifamily Residential (MFR) District is to provide for "medium-to-high density residential development up to approximately 36 dwelling units

per gross acre, including single-family (attached and detached), two-family and multi-family." Residential districts zoned R-2 in the Central Newport area provide medium density residential development. Therefore, if the facility population is reduced to achieve a medium level of density, the basic purpose of residential districts zoned R-2 is not undermined from a density perspective.

Section 20.10.020 of the NBMC establishes those uses that are permitted, conditionally permitted, and prohibited within the R-2 District. In accordance with Section 20.10.020 of the NBMC, unlicensed residential care facilities are not permitted in the R-2 District, and are only permitted in the MFR District subject to approval of a use permit.

The Hearing Officer accordingly finds that by limiting the maximum occupancy to six residents with one full-time staff member housed among three bedrooms (Unit A) within a duplex unit, or within one unit of the duplex building with the other unit occupied by a single housekeeping unit, the intensity of the use would be consistent with typical residential development intensity in the R-2 District, and would be compatible with the surrounding two family residential properties. However, staff was unable to make similar findings of compatibility with surrounding two-family residential properties at the population level which Balboa Recovery stated it required for financial viability of the facility.

Balboa Recovery Inc. has indicated that limiting the occupancy to six residents with one full-time staff member is financially infeasible, and has agreed to abate the use within twelve months of the adoption of this resolution.

Building Code and Life Safety Consideration: The State Fire Marshal has made the determination that residential care occupancies with more than six residents have characteristics that require a certain degree of extra protection for the safety of the residents. Residential care and housing for more than six residents in a building are classified as an R-4 occupancy. This occupancy group includes buildings arranged for social rehabilitation, including alcoholism or drug abuse recovery or treatment for seven or more clients. A building housing an R-4 occupancy would have to further comply with building code requirements found in either the 2001 or 2007 California Building Code. These may include, but are not limited to, vertical and horizontal fire separation walls, fire suppression systems, alarm and detection systems, and unprotected window openings. R-4 requirements would present a greater challenge for the Balboa Recovery Inc. The Hearing Officer determines that allowing the applicant to continue to operate with more than six resident clients during the abatement period will not fundamentally alter the nature of a Building Code program.

Use Permit Consideration: Ordinance No. 2008-05 places regulations on all groups not living as either a single housekeeping unit or a designated "Residential Care Facilities, Small Licensed" in residential districts. The basic purpose of these regulations is to ensure (1) that the fundamental purposes of the Zoning Code can be

achieved, (2) that adverse secondary impacts produced by group residential uses not living as a single housekeeping unit can be eliminated, and (3) that the adverse secondary impacts that Residential Care Facilities, General" and "Residential Care Facilities, Small Unlicensed" may have on the surrounding neighborhood can be mitigated. To accommodate the needs of the disabled for housing opportunities, Ordinance No. 2008-05 provides that non-conforming residential care facilities located in residential districts may be allowed to continue operating subject to approval of either a use permit or a request for reasonable accommodation.

Use permits are required for use classifications typically having operating characteristics requiring special consideration so that they may be located and operated compatibly with uses on adjoining properties and in the surrounding area. NBMC Section 20.91A.010 sets forth the purposes of requiring use permits in residential districts. The first stated purpose is ".to promote the public health, safety, and welfare and to implement the goals and policies of the Newport Beach General Plan by ensuring that conditional uses in residential neighborhoods do not change the character of such neighborhoods as primarily residential communities. The second stated purpose is "to protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or over-concentrated in any particular area so as to institutionalize that area.

Even if the facility is exempted from Section 20.10.020 and permitted to remain in its current location, it is not exempt from reasonable controls the City might place on it. NBMC Section 20.98.015 states that the Hearing Officer shall approve, *conditionally approve,* or deny applications for reasonable accommodation. The City can impose the same conditions through an accommodation that it could impose under a use permit. A reasonable accommodation with appropriate conditions can mitigate adverse secondary impacts such as noise, overcrowding, parking and traffic impacts, excessive second-hand smoke, and unruly behavior by residents of applicant's facility to the detriment of neighbors.

Furthermore, unlike a use permit, a reasonable accommodation is not a land use entitlement that runs with the land to future owners and facility operators. A reasonable accommodation is a disability-related exemption that is specific to the housing provider or disabled individual(s) to whom it is granted, as well as specific to the dwelling. If Balboa Recovery Inc. ceased to provide disabled housing at this location, the accommodation would no longer be necessary and would also cease.

Balboa Recovery Inc. requested an exemption from the requirement of NBMC Section 20.10.020 that Residential Care, Small Unlicensed uses be established only in a residential district zoned MFR, with a use permit. Therefore, the City must grant the requested accommodation only if allowing the applicant's facility to continue operation

in its current location without a use permit does not result in a fundamental alteration of the City zoning program. "Fundamental alteration" has been described in cases interpreting the FHAA's reasonable accommodation requirement as "undermining the basic purpose which the requirement seeks to achieve." Therefore, the request must be granted only if the granting the accommodation does not undermine the basic purpose of requiring Residential Care, Small Unlicensed facilities to establish only in districts zoned MFR, and does not undermine the basic purpose of requiring a use permit for such uses.

NBMC Section 20.98.015 states that the Hearing Officer shall approve, conditionally approve or deny applications for reasonable accommodation. Therefore, the Hearing Officer can impose the same conditions through an accommodation that he or she could impose under a use permit. A reasonable accommodation with appropriate conditions can mitigate adverse secondary impacts such as noise, overcrowding, excessive second-hand smoke, and unruly behavior by residents of applicant's facility to the detriment of neighbors.

The Hearing Officer determines that if appropriate conditions are placed on the operations of the facility during its 12-month abatement period, permitting it to operate at the requested population level will not undermine the basic purpose of the use permit requirement. Conditions should be applied to the use that require operation consistent with the basic purposes of NBMC Sections 20.10.010, 20.10.020, and Chapter 20.91A. The conditions of approval are described below.

1. That the facility agree to a bed cap of no more than 10 resident clients plus two on-site resident managers, who shall be a qualified recovery specialist;
2. If the applicant obtains a license from ADP to operate a facility for six or less clients in one of the duplex units, the other unit may only be used to provide housing for a single housekeeping unit; and
3. Maintaining quiet hours from 10:00 p.m. to 8:00 a.m.;
4. Establishing quiet hours for television use from 10:00 p.m. to 8:00 a.m.;
5. Requiring compliance with the standards of NMBC Section 20.91A.050(A), relating to secondhand smoke detectable from off the parcel upon which the facility is located.

Essentially, these conditions would require that the facility comply with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A for the remainder of its operation at the current location.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

A. Whether the requested accommodation would fundamentally alter the character of the neighborhood.

Balboa Recovery, Inc. requests to continue to house up to 10 disabled individuals in a facility in both units of a duplex. The requested accommodation would permit a maximum of 10 disabled individuals in recovery with one resident manager in each unit of a duplex, all of which are not living as a single housekeeping unit, to live on a block of single housekeeping units.

With the reduction in resident population recommended by staff, the intensity of the use would be consistent with the intensity of use that would be produced by single housekeeping units in two-family residential districts, and would be compatible with the surrounding two-family residential properties. However, the Hearing Officer is unable to make the same finding at the population level requested by the applicant.

B. W hether the accommodation would result in a substantial increase in traffic or insufficient parking.

Parking: The dwelling units occupied by the facility provide two enclosed garage parking spaces. Of the two onsite spaces available, one is reserved for the resident manager. Use of the remaining space is assigned by the resident manager.

The Zoning Code requires one on-site parking space per three residential care facility beds. With 10 beds, the required parking for the facility would be four spaces. Therefore, the facility currently does not meet the required parking.

Traffic and Generated Trips: The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of a duplex, the standard trip rate is based on 6.72 average daily trips per dwelling unit. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed. Based on these standards, a duplex would generate approximately 13.44 average daily trips, whereas an eight-bed residential care facility with two additional resident manager beds would generate approximately 27.4 average daily trips.

C. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.

General Plan Policy LU 6.2.7 requires the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law to minimize impacts on residential neighborhoods. The City adopted Ordinance No. 2008-005 in order to implement General Plan Policy LU 6.2.7.

D. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

There are no other documented facilities similar in nature or operation to the subject facility within this block or any of the immediately adjacent blocks. Staff recommended and the Hearing Officer agrees that granting the reasonable accommodation with a condition of approval limiting the maximum occupancy of the facility to six residents and one full-time staff member would not create an institutionalized environment. .

5. Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

Facts in support of finding: A request for reasonable accommodation may be denied if granting it would pose "a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others." *See* 42 U.S.C. § 3604(f)(9). This is a very limited exception and can only be used when, based on the specific facts of a situation, a requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons.

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 (Section15061(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; and

NOW THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby denies Reasonable Accommodation No. 2009-012, subject to the Conditions set forth 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 2ND DAY OF JULY, 2009.

By: _____
Thomas W. Allen, Hearing Officer

ATTEST:

Shana Stanley
Deputy City Clerk

EXHIBIT "A"

ABATEMENT CONDITIONS ASSOCIATED WITH DENIAL OF

REASONABLE ACCOMMODATION NO. 2009-012

BALBOA RECOVERY INC. at 124 30th Street

1. **Abatement Agreement Required.** Balboa Recovery Inc., shall enter into an abatement agreement with the City that will stipulate that the facility at 124 30th Street shall abate no later than 12 months following the adoption of the resolution denying the reasonable accommodation request ("Abatement Period"). As a Reasonable Accommodation, during the Abatement Period, Balboa Recovery Inc. may continue to operate the facility at 124 30th Street at its current population level of 10 resident clients and one resident manager in each unit. During the Abatement period, Balboa Recovery Inc shall comply with the following Conditions:

2. **Occupancy Level.** The operator Balboa Recovery Inc. hereinafter referred to as "Operator," shall limit occupancy of the facility to 10 client beds and two on-site resident manager (one in each unit), both of whom shall be qualified recovery specialists. No more than 10 persons in recovery may reside at the facility.

3. **Staffing.** Operator shall have one qualified manager on-site at all time (24 hours a day, seven days a week) to appropriately and responsibly manage the facility.

4. **Governmental Referrals.** Operator shall not provide any services to any client or house any client who has been referred or caused to be referred to this facility by any governmental agency, including but not limited to probationers or parolees.

5. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff.

6. **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.

7. **Trash.** Operator shall abide by the City's regulations regarding trash dsposal including providing the proper amount of trash cans for the property's use (so that cans do not overflow), placing the cans out no earlier than 7:00 pm the evening prior to collection, and placing the cans back in the side yard (or other contained area) no later than 6:00 pm the day of collection.

8. **Smoking & Cigarette Litter.** Per NBMC Section 2091A.050(A), no clients, guests, or any other users of the subject property may smoke in an area from which the

secondhand smoke may be detected on any parcel other than the parcel upon which the use is located. Balboa Recovery Inc. will enforce house rules against litter, including allowing clients, staff, or residents from littering cigarette butts on the ground, sidewalk, gutter or street.

9. **Parking & Garages.** Operator shall keep the two (2) designated garage parking spaces at the facility open and available for parking for staff, and resident clients at all times. One space shall be designated for use by the on-site resident manager. The second space shall be designated for use by one client resident.

10. **Transportation**. No transportation services are provided by the facility operator

11. **Quiet Hours.** The on-site facility manager shall maintain "Quiet Hours" between 10:00 pm to 8:00 am, daily, where persons on the street or on adjacent properties cannot hear any noise (including music, TV's, voices) from the facility except in an emergency.

12. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property. Profanity at a level audible to neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.

13. **Deliveries.** Any deliveries of business products and other packages and goods to the facility during weekdays shall be made between the hours of 9:00 am to 5:00 pm.

14. **Contact Information.** Operator shall provide area residents and the City with a 24/7 contact name, phone number and e-mail address to assist residents and the City with problems or concerns arising from the facility. E-mails or messages left for the Operator's designated contact shall be returned in prompt manner within the next 24-hour period.

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

16. **Facility 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 with seven days or contact the City directly to negotiate a mutually agreeable timeline.

17. **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)

18. **Services to Facility's Clients or Residents.** Operator will 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 encouragement of 12-Step meetings or counseling). Operator has represented that the facility operates with an average client stay of 300-days. Operator shall use bet efforts to maintain, at a minimum, average client stay of 300-days. Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.

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

# # #