

RESOLUTION NO. HO-2010-001

A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH APPROVING A 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 the ordinance 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 accommodations 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., requesting a reasonable accommodation from the requirements of Newport Beach Municipal Code (NBMC) Section 20.10.020 (*Residential Districts: Land use Regulations*) with respect to property located at 124 30th Street, and legally described as Newport Beach City Block 29, Lot 18, Tract 512; and

WHEREAS, a public hearing was held on May 20, 2009, presided by Hearing Officer Thomas Allen, who determined that the findings required by Section 20.98.025(B) of the NBMC could not be made to grant a reasonable accommodation for 10 resident clients and two resident managers, and on July 2, 2009, the Hearing Officer adopted Resolution No. HO-2009-015 denying Reasonable Accommodation No. 2009-002 without prejudice, granting the applicant a one-year period in which to abate the use; and

WHEREAS, on February 1, 2010, Kevin Cullen submitted a request for an amendment to his request for Reasonable Accommodation No. 2009-002 to allow the continued operation of an existing sober living facility with a reduced population from 10 female adult resident clients and two resident managers to no more than six female adult resident clients and two resident managers in the two units of a duplex building. The facility is located in the R-2 District, where such uses are not permitted, and the applicant requests an accommodation from the requirements that sober living facilities are permitted only in MFR Districts with approval of a use permit; and

WHEREAS, a public hearing was held on June 11, 2010, 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 Judy Sherman, 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: The applicant has submitted an amended request for reasonable accommodation to allow six female resident clients and two resident managers in the two units of the duplex building. The applicant has stated that continued operation in this location provides a therapeutic benefit to its clients, and that it is necessary to provide a resident manager in each unit in order to monitor the residents' activities and ensure their safety.

In the interim, between now and the end of September 20 10, the applicant has requested that the current population level of eight resident clients be allowed to remain in the two units of the duplex building. This would allow the current resident clients to complete their intended stay, and provide these residents an equal opportunity to use and enjoy their current dwelling.

The Hearing Officer finds that with a reduced facility population of six female resident clients in both units of the duplex building, the amended accommodation will continue to afford disabled individuals an equal opportunity to use and enjoy a dwelling in a small sober living environment.

The Hearing Officer deems it appropriate to condition the grant of accommodation to include an interim period in which all eight resident clients currently residing in the facility may remain at the property between July 2, 2010 and September 30, 2010. Further, the Hearing Officer determines it is appropriate to condition the grant of accommodation to state that, as of the date of approval of the accommodation, no additional residents shall be accepted at the facility until attrition of current clients causes the facility to house fewer than six resident clients.

The Hearing Officer finds there are limited opportunities within the City for females in recovery to live in a female-only building with six or fewer other recovering individuals, surrounded by other single housekeeping units. The Hearing Officer has determined the requested reasonable accommodation is necessary to provide an opportunity for

disabled female residents to live in a small self-paced recovery environment in a residential setting which allows the residents to reintegrate into the world and workforce.

NBMC Section 20.98.025(C) allows the Hearing Officer 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.*

With the granting of the requested accommodation, the applicant's current and potential clients will be able to live in a dwelling unit in an R-2 District with other individuals in recovery from addiction. 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 with the exception of an all-male sober living facility located at 127 29th Street which is currently subject to abatement. The operators of the 29th Street facility are in the process of entering an abatement agreement with the City which requires closure of the facility by August 31, 2010, at the latest.

- 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.*

The applicant requests 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. The applicant seeks to continue the operations of the existing sober living facility with no more than six disabled individuals in the two units of a duplex building. The Hearing Officer finds that facts have been provided that support a finding that by allowing the facility to continue at its current location with no more than six female resident clients, females with a disability would be afforded an equal opportunity to enjoy the housing type of their choice in a small, gender-specific recovery environment.

- 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.*

The applicant contends that relocation of the current facility would be a significant financial burden, and reports that, with the requested accommodation, changed

circumstances now allow the facility to be financially viable under conditions similar to those at other facilities of a similar nature and operation.

- 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 availability of other facilities that are of a "similar nature and operation." Based on an inventory conducted in April 2010, females in recovery from alcoholism or chemical dependency wishing to live in Newport Beach in a sober living environment have the following housing opportunities that they can choose from:

- Balboa Recovery operates a single comparable facility, with housing for six female resident clients in two units of a duplex at 204 21st Street under a reasonable accommodation granted in May 2009; and
- Pacific Shores Properties operates one female-only sober living home, in one unit of its 492 and 492 ½ Orange Street facility. This unit was granted a reasonable accommodation allowing it to continue to house up to 12 resident clients; and
- An unlimited number of beds are available 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 single housekeeping unit.

There are also sober living 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 with up to six individuals *per duplex unit*, 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 of the effective date of the agreement, 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 of the effective date of the agreement. The City is not aware of how many of these beds are available specifically to female clients.

Currently, the City is in the process of entering a similar zoning agreement with Morningside Recovery, which would allow Morningside Recovery to continue operation of sober living facilities housing up to 36 resident clients in five duplex units and one single-family condominium dwelling. The City is not currently aware of how many of these beds are available specifically to female clients.

A denial of the reasonable accommodation would not deprive prospective residents of Balboa Recovery of the opportunity of live in a residential setting with 11 other individuals in recovery in two units of a duplex building. These 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. However, at this time it appears that the only other sober living facility in the City that offers housing for only three female resident clients per duplex unit is the other female-only Balboa Recovery facility located at 204 21st Street.

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

Facts in Support of Finding: The Hearing Officer finds that 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 Finding: As analyzed below, the Hearing Officer finds that allowing the current residents to remain for an interim period between July 2, 2010 and September 30, 2010, and a maximum of no more than six female resident clients and two resident managers, as requested by the applicant, would not result in a fundamental alteration of a City zoning program.

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 “provides areas for single-family and two-family residential land uses.”

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 finds that the intensity of the use would be consistent with typical residential development intensity in the R-2 District with the granting of the reasonable accommodation to allow the continued operations of the sober living facility with a maximum occupancy of six resident clients and two resident managers in the two units of the duplex building. The Hearing Officer finds that the intensity of the use would also be compatible with the surrounding two-family residential properties.

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. Pursuant to the provisions of the California Building Code, facilities providing residential care and housing for more than six resident clients 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 resident clients.

If the occupancy of the facility is reduced to provide housing for six resident clients and two resident managers within the two units of the duplex building, the building would be classified as an R-3.1 occupancy. Building code requirements for R-3.1 occupancies are similar to requirements for occupancies classified as R-3. The R-3 occupancy classification and requirements apply to single family homes and duplexes. The code requirements of an R-3.1 occupancy are less stringent than an R-4 occupancy, and the existing duplex building can easily and cost-effectively be brought into compliance with the R-3.1 code requirements.

Use Permit Consideration: Ordinance No. 2008-05 places regulations on all groups not living as either a single housekeeping unit or 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, if applied for within the time period specified in the ordinance, 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 Hearing Officer 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 Hearing Officer can impose the same conditions through a reasonable 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, parking and traffic impacts, excessive second-hand smoke, and unruly behavior by residents of a facility to the detriment of neighbors.

The Hearing Officer finds that conditions of approval should be and accordingly are applied to the use that will allow the accommodation to be granted consistent with the basic purposes of NBMC Sections 20.10.010, 20.10.020, and Chapter 20.91A. The Hearing Officer's conditions of approval are described below.

1. The operator of the sober living facility shall agree to a bed cap of no more than six female resident clients plus two resident managers, who shall be qualified recovery specialists;
2. If the applicant obtains a license from ADP to operate a facility for six or fewer clients in one of the duplex units, the other unit may only be used to provide housing for a single housekeeping unit; and
3. Quiet hours between 10:00 p.m. and 8:00 a.m.;
4. 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 is required.

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. The Hearing Officer finds that with these conditions, the findings required by NMBC Section 20.91A.060 for issuance of a use

permit could be made with regard to this facility. With conditions of approval, the use could conform to all applicable provisions of Section 20.91A.050.

The Hearing Officer finds, that as conditioned, the use would be compatible with the character of the surrounding neighborhood, and the continued maintenance of the use would not contribute to changing the residential character of the neighborhood or create an overconcentration of residential care uses in the vicinity. In considering whether the residential character of the neighborhood would be changed, the Hearing Officer has considered that the American Planning Association standard of one or two such uses per block is not exceeded by allowing the continued maintenance of this facility as there will be no other residential care uses on this block, or any of the immediately adjacent blocks. In addition, there has been no evidence presented to the Hearing Officer that indicates that there have been any issues with delivery of goods that adversely affect the peace and quiet of neighboring properties, or issues of trash generated in excess of surrounding properties.

Pursuant to Section 20.98.025(D) of the NBMC, the Hearing Officer 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 an amended reasonable accommodation to allow the continued operation of an existing sober living facility to provide housing for no more than six disabled individuals in a facility in both units of a duplex. The requested accommodation would permit a maximum of six disabled individuals in recovery and two resident managers in the two units of the duplex building, all of which are not living as a single housekeeping unit, to live on a block of single housekeeping units. As a condition of approval, the Hearing Officer requires that the facility be limited to a maximum occupancy of six resident clients and two resident managers in the two units of the duplex building.

With the reduction in resident population as required by conditions of approval, 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. The Hearing Officer finds that approval of the reasonable accommodation with appropriate conditions of approval to allow the facility to remain in its current location in the R-2 District will not undermine the basic purpose of this portion of the City's zoning program.

- B. *Whether the accommodation would result in a substantial increase in traffic or insufficient parking.*

Parking – The duplex building occupied by the facility has two enclosed garage parking spaces. The Zoning Code requires one on-site parking space per three residential care facility beds. With six residential care facility beds, the required parking for the facility would be two spaces. As such, the facility currently meets the required parking standards.

A condition of approval is included requiring that the two designated garage parking spaces at the sober living facility shall remain open and available for parking for staff and the resident clients at all times. In addition, the applicant shall limit the number of vehicles onsite at anytime to two, which must be parked in the garage. At most, one other resident client may have a vehicle and park on the street in a legally designated parking space. Client move-in and move-out shall be accomplished in a manner that does not block traffic, area driveway or alleys.

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 a six-bed residential care facility with two resident manager beds occupying both units of a duplex would generate approximately 16.44 average daily trips. The Hearing Officer finds that this number does not represent a substantial increase in traffic.

Due to the fact that the applicant limits and manages the use of personal vehicles by residents at the facility, the number of trips generated would not be significantly in excess of trips generated by that of a duplex with the granting of the reasonable accommodation with a condition of approval limiting the maximum number of residents to six resident clients and two resident managers. Approval of the amended request for reasonable accommodation includes conditions that restrict use of residents' personal vehicles while living at the facility, which will reduce impacts on parking to an insubstantial level.

C. *Whether granting the 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. The Hearing Officer finds that granting the requested accommodation with the recommended conditions of approval enables the City to apply appropriate reasonable regulations on the facility, consistent with the express purpose of the General Plan with regard to these facilities.

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.*

With the upcoming abatement of the sober living facility at 127 29th Street, 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. The Hearing Officer finds that granting the reasonable accommodation with a condition of approval limiting the maximum occupancy of the facility to six residents and two resident managers in the two units of the duplex building 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. The Hearing Officer finds that the requested accommodation will not result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

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

NOW THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby approves Reasonable Accommodation No. 2009-002, subject to the Conditions set forth in Exhibit "A" attached hereto and made a 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 18th DAY OF JUNE, 2010.

By: *Judy Sherman*
Judy Sherman, Hearing Officer

ATTEST:

Neilson J. Brown
City Clerk



EXHIBIT "A"

**CONDITIONS OF APPROVAL
REASONABLE ACCOMMODATION NO. 2009-002
BALBOA RECOVERY INC. at 124 30th Street, Units A and B**

1. **Grant of Reasonable Accommodation.** Reasonable Accommodation No. 2009-002 is granted solely to Balboa Recovery, Inc. (hereinafter "the Operator") to operate an adult sober living facility for disabled female clients in the two units of a duplex building located at 124 30th Street. Reasonable accommodation to occupy the building (inclusive of both units) is granted to six disabled female persons and two resident managers. The Operator shall execute an affidavit declaring that all clients receiving services from this facility are disabled persons.
2. **Interim Occupancy Level.** For an interim period, from the date of adoption of this resolution to September 30, 2010, the Operator shall limit occupancy of the building to eight resident female client beds and two on-site resident managers, who shall be qualified recovery specialists. If any of the eight resident clients currently residing at the facility as of the date of approval of Reasonable Accommodation No. 2009-002 cease residency at the facility after July 2, 2010, the Operator shall not accept any additional residents that would cause the facility's population to exceed six resident clients. Under no circumstance shall more than eight female clients in recovery reside in the building during this interim period.
3. **Occupancy Level.** Effective October 1, 2010 (or earlier, if attrition of current residents permits), the Operator shall limit occupancy of the building to six female resident client beds and two on-site resident managers, who shall be qualified recovery specialists. No more than six persons in recovery may reside in the building.
4. **Annual Compliance Review.** The Operator shall comply in good faith with the conditions of approval of this Reasonable Accommodation. On or before December 31st of each year, the Operator shall deliver to the City a certification (Exhibit "B"), under penalty of perjury, stating the facility is operating in compliance with the terms of the Conditions of Approval granted with this Reasonable Accommodation. To confirm compliance with the conditions of approval agreed upon by City and Operator in this Reasonable Accommodation, the City shall schedule an annual on-site inspection of the sober living facility, providing the Operator 24-hour notice by email and telephone of the time and date of the inspection.
5. **Staffing.** Operator shall have two qualified resident managers on-site at all time (24 hours a day, seven days a week) to appropriately and responsibly manage the facility.

6. **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.
7. **Assembly Uses.** Assembly uses are prohibited, except those that are limited solely to client residents of the facility and facility staff.
8. **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.
9. **Trash.** Operator shall abide by the City's regulations regarding trash disposal 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.
10. **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.
11. **Vehicles, Parking & Garages.** This facility may have a maximum of three vehicles associated with its use. The Operator shall keep the two designated garage parking spaces at the facility open and available for parking for staff, and resident clients at all times. At most one other client in the facility may have a vehicle and park on the street in a legally-designated parking spot. Client move-in and move-out shall be accomplished in such a manner that traffic on 30th Street is not blocked, nor may area alleys be blocked.
12. **Transportation.** No transportation services shall be provided by the facility operator.
13. **Quiet Hours.** The on-site facility manager shall maintain "Quiet Hours" between 10:00 p.m. and 8:00 a.m., 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.
14. **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.

15. **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 a.m. to 5:00 p.m.
16. **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.
17. **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.
18. **Nuisances.** The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regard to any of these issues, Operator shall correct the violation with seven days or contact the City directly to discuss an alternative timeline consistent with the Newport Beach Municipal Code.
19. **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)
20. **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 best 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.
21. **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.
22. **Additions or Modifications to Conditions of Approval, or Revocation of Reasonable Accommodation.** The Hearing Officer or City Council may add or modify conditions of approval to this reasonable accommodation, or revoke this Reasonable Accommodation upon a finding of failure to comply with the conditions

set forth. The City Council may also revoke, modify, or amend this Reasonable Accommodation if it determines the conditions under which this facility is being operated or maintained are detrimental to the public health, safety, peace, morals, comfort, or general welfare of the community, or if the facility is materially injurious to property or improvements in the vicinity, or if the facility is operated or maintained so as to constitute a public nuisance. In any proceeding to revoke this Reasonable Accommodation, the cumulative effect of a violation of two or more conditions shall be considered.

23. **Compliance with Conditions of Approval.** Per NMBC Section 20.98.035 (Amendments), a request for changes in conditions of approval shall be treated as a new application unless they are minor, do not involve a substantial alteration to the plan or conditions of approval, and are consistent with the intent of the original approval. Any changes in operational characteristics, including but not limited to the following, shall require amendment to this reasonable accommodation or can only take effect upon issuance of a new reasonable accommodation:
- a. Increase in number of resident clients.
 - b. Change in gender-specific nature of housing.
 - c. Change in on-site staffing affecting the ability of the operator to adequately manage the facility and provide supervision of its residents.
 - d. A change in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.
 - e. Request for amendment to any condition or conditions or approval.
 - f. Change in property ownership in a manner that causes the majority of the property to be owned by a person or entity not identified in the Reasonable Accommodation or its application.
 - g. Change in client base such that persons living there are no longer classified as disabled or verified to be disabled.
 - h. Alteration and/or loss of approved on-site parking.
 - i. Upon determination by the Planning Director, a change in facility management, a change in facility ownership, or a change in the population served by this facility. The term "change in facility management" shall include but not be limited to a change in the current management of Balboa Recovery, Inc. and/or the conveyance, sale or assignment of a majority of Balboa Recovery, Inc.'s rights and obligations as to the facility at 124 30th Street to any successors in interest or assignees of Balboa Recovery, Inc.

- j. Any other material change in the operational characteristics that is not in substantial conformance with the Operation and Management Plan, upon determination by the Planning Director.

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EXHIBIT "B"

Annual Compliance Certification

Balboa Recovery, Inc.
124 30th Street

The Operator of Balboa Recovery Inc. certifies, under penalty of perjury, that each of the following statements is true and correct as of the date of this Certification:

1. The building is occupied by no more than six female resident clients and two on-site resident managers.
2. There are no more than six persons in recovery from alcoholism and/or drug addiction residing at the building.
3. Two qualified resident managers are on-site at all times.
4. Services or housing are not provided to 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. No assembly uses are conducted at this facility, except those that are limited solely to client residents of the facility and facility staff.
6. All medical waste is disposed of in accordance with the City of Newport Beach's Municipal Code, all other laws and best industry standards and practices.
7. Trash is disposed in a manner consistent with the City's regulations, with trash receptacles placed for collection no earlier than 7:00 p.m. the evening prior to collection, and the receptacles are returned to the side yard (or other contained area) no later than 6:00 p.m. the day of collection.
8. Clients, guests, or any other users of the subject property smoke in a designated area in which the secondhand smoke is not detected on any parcel other than the parcel upon which the use is located. House rules are enforced against littering the ground, sidewalk, gutter or street with cigarette butts.
9. No more than three vehicles are associated with resident clients or resident managers at any time at the facility. The two garage parking spaces are open and available for vehicle parking by staff and resident clients at all times. The third vehicle is parked on the street in a legally-designated parking spot.
10. No transportation services for the resident clients are provided by the Operator.

11. "Quiet Hours" are maintained daily between 10:00 p.m. and 8:00 a.m.
12. Lewd behavior, lewd speech, or profanity at the facility by the resident clients is not tolerated by the resident managers.
13. Deliveries of business products and other packages and goods are scheduled for receipt during weekdays between the hours of 9:00 a.m. to 5:00 p.m.
14. Efforts are made to maintain the subject property in a clean and safe manner.
15. The resident managers and Operator of the facility use the industry's best practices to ensure that the facility's resident clients stay in recovery (including scheduled substance testing, random substance testing, and encouragement of 12-Step meetings or counseling). The resident managers and Operator use best efforts to maintain, at a minimum, average client stay of 300-days.
16. I, _____, certify that I am authorized to sign this certification on behalf of Balboa Recovery, Inc.

Signed under penalty of perjury on this _____ day of _____.
(day) (month, year)

Signature

Name printed