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5 Hearing Officer

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7 **CITY OF NEWPORT BEACH**
8 **GROUP HOME HEARINGS**

9
10 IN THE MATTER OF:)

11 THE REQUEST OF PACIFIC SHORES)
12 PROPERTIES, LLC, FOR A)
13 REASONABLE ACCOMODATION TO)
14 OPERATE A RESIDENTIAL CARE)
15 FACILITY)

16 **ORDER OF HEARING OFFICER FOR**
17 **SUBMITTAL OF FINANCIAL**
18 **INFORMATION TO ESTABLISH**
19 **NECESSITY**

20 REASONABLE ACCOMMODATION NO.)
21 RA 2008-001

22 **Background:** On December 16, 2009, a duly noticed public hearing was held
23 before Thomas W. Allen, Hearing Officer appointed by the City of Newport Beach, at the
24 direction of the City Council, to consider one aspect of an application for reasonable
25 accommodation filed by Pacific Shores Properties, LLC (“Pacific Shores”) for the adult
alcohol and/or drug abuse recovery and treatment facilities at 492 and 492 ½ Orange
Avenue, Newport Beach CA (“the Properties”). Specifically, the financial necessity
element of the reasonable accommodation analysis is at issue, and whether the number

1 of occupants Pacific Shores requests in its application are necessary to make the
2 Properties financially viable.¹

3 An applicant bears the burden to demonstrate the financial necessity for the
4 number of occupants it requests in its application for reasonable accommodation. *Lapid*
5 *Laurel v. Board. Of Zoning Adjustment of the Township of Scotch Plains* 284 Fed. 3d
6 442, 460-61 (3d Cir 2002). The Applicant herein contends a minimum of 12
7 patients/residents in each of the two dwelling units is necessary to make the Properties
8 financially viable.

9 Testimony was presented by the Applicant, City Staff and several members of
10 the public in attendance. Counsel for the parties also presented argument. At the
11 request of the Applicant, a portion of the hearing was conducted outside the presence of
12 the public because the Applicant contends and the City concurs that the financial
13 information is proprietary and subject to confidentiality pursuant to the Newport Beach
14 Municipal Code and California Evidence §1040. The Reporter recorded both the public
15 and closed sessions of the hearing and will seal the portion of the hearing containing
16 the confidential information.

17 **Financial Information Required:** Counsel for the City and the Applicant
18 informed the Hearing Officer that there is no clear guidance in reasonable
19 accommodation law for what kind of financial information should be required by, or in
20 what format it should be presented to, a governmental agency to allow it to make a
21 finding of financial necessity. Based upon the considerable discussion between the

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24 ¹ In Resolution No. 2009-81 the City Council directs the Hearing Officer to: “determine
25 whether the requested number of residents [requested by Pacific Shores] are necessary
to achieve financial viability”.

1 parties, attorneys and the Hearing Officer, the following describes the Financial
2 Information and substantiating evidence to be provided by the Applicant to meet its
3 burden of proof:

- 4 1. Period for Analysis: The time period covered by the information shall be the
5 most recent 12 month period for which information is available to Applicant
6 and need not be a calendar year. The Income and Expense information
7 presented shall be for the same 12 month period of time.
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9 2. Income: The Applicant shall include all consideration paid, given or provided
10 to Pacific Shores Properties, LLC by all occupants, users or tenants of the
11 Properties for the stated period. Income information shall include the
12 periodical (day, week, month) amount the Applicant charges on a per
13 patient/occupant basis.
- 14 3. Expenses: The Applicant shall provide information for Water, Gas, Cable, and
15 Electrical service, Touchstone (description of service), Accounting,
16 Management Fees/Salaries, Tests (description of service), Transportation
17 (fuel), Sober Living Coalition, Insurance, Taxes (identify which property for
18 property taxes, and describe nature of any other taxes paid), Telephone and
19 Internet service, Advertising, Merchandise/Supplies, Property Maintenance,
20 Mortgage Payments (identify payments for each property and include
21 Principal & Interest).
- 22 4. Verification Documents Required: To verify Income, the Applicant shall
23 provide all leasing agreements or other occupancy contracts for the 12 month
24 period of analysis, with address of residency and amount paid clearly
25 identified, but with all patient identifying information redacted.

1 To verify Expenses, the Applicant shall provide sufficient documentation in
2 the form of receipts, bills or other data to allow the City to independently verify
3 the validity of the items listed. The documentation should verify amounts
4 paid, and in the case where an expense is incurred only by one address (e.g.,
5 mortgage payments, utilities), the documentation should identify the specific
6 address. For verification of Expenses, the Applicant shall not be required to
7 provide documentation for each repetitive period, such as every month's bills
8 for the 12 month period of analysis. Rather, examples of the monthly bills
9 showing the expense shall be adequate.

10 If the Applicant does not possess and cannot obtain verifying documentation
11 for Income or Expenses such as would be required for its tax returns, it shall
12 provide an explanation for the lack thereof.

13 5. Verification By Persons With Personal Knowledge: The Financial Information
14 shall contain a signed statement as follows: "The preparer(s) of this
15 information certifies to the City of Newport Beach that as of his/her personal
16 knowledge, except as otherwise noted on an entry by entry basis, the
17 documents and information presented are true, correct and accurate and may
18 be relied upon in making determinations regarding the financial viability of the
19 operation of the Properties at 492 and 492 ½ Orange Avenue, Newport
20 Beach".

21 Mr. Mark Manderson Jr. testified he is employed by Pacific Shores Properties,
22 LLC as the Manager of the Properties at 492 and 492 ½ Orange Avenue and
23 is responsible for paying their operating expenses. Mr. Manderson also
24 testified Mr. Robert Conner owns the Properties and he pays certain other
25 expenses for the Properties. Accordingly, included with the Financial

1 Information required by this Order, shall be an executed statement or
2 statements wherein Mr. Manderson identifies and certifies as true the items of
3 income and expense that are within his personal knowledge and Mr. Conner
4 identifies and certifies as true the items of income or expenses that are within
5 his personal knowledge.

6 **Confidentiality:** To the extent the Financial Information provided is to remain
7 confidential, it shall be treated accordingly by the parties.

8 **Profit:** The amount of profit which an applicant for reasonable accommodation is
9 entitled to earn shall be discussed in briefs provided to the Hearing Officer by January
10 20, 2010.

11 **Continuance and Deadlines:** The Hearing is continued to February 11, 2010 at
12 3 pm in the Council Chambers of the Newport Beach City Hall.

13 On or before 12 pm noon on January 29, 2010, the Applicant shall deliver to the
14 City the Financial Information described in this Order. The City shall deliver the
15 Information to the Hearing Officer on the same day, January 29, 2010.

16 **So Ordered.**

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18 December 22, 2009

/s/ Thomas W. Allen, Hearing Officer

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