

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-9942

File: 70-587706; Reg: 19088640

LORETTA LEWIS,
Appellant/Protestant

v.

AR SPIRITS MANAGER, LLC,
d.b.a. Hotel Joaquin
985 North Coast Highway,
Laguna Beach, CA 92651-1416
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Hubel

Appeals Board Hearing: May 13, 2022
Sacramento, CA

ISSUED MAY 16, 2022

Appearances: *Appellant/Protestant:* William A. Adams, as counsel for Loretta Lewis,

Respondents: Michael Cho, as counsel for applicant AR Spirits Manager, LLC; and Kellie Brady, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Loretta Lewis (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control (Department)¹ granting the application of AR Spirits Manager, LLC, doing business as Hotel Joaquin (respondent/applicant), for an on-sale general restrictive service license.

¹ The decision of the Department, dated December 28, 2021, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

On October 19, 2017, applicant petitioned for the issuance of a type-70, on-sale general restrictive service license. A type-70 license authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. Residents within 100 feet of the premises were notified about the application, and a single protest was filed by the appellant against the issuance of the license.

Administrative hearings were held on September 24, 2019, and October 5 - 6, 2021. Oral and documentary evidence was presented at the hearings concerning the application, the Department's subsequent investigation, and the protest.

Testimony established that the premises is a three-story split level hotel with twenty-two guest rooms located on a major thoroughfare in a mixed-use commercial and residential area. It includes an outdoor courtyard surrounded on three sides by the hotel and open to a pool area on the southern side. The pool area is surrounded by a concrete wall which varies from six to twenty-five feet in height, covered by vegetation.

The premises has operated as a hotel known as the Laguna Beach Motor Inn since 1946, but has never been licensed by the Department. It was acquired by the applicant in 2017, and after remodeling it opened as the Hotel Joaquin in 2018. It is located in census tract 626.04, which permits 19 on-sale licenses. The applied-for license would constitute the 20th, thereby constituting overconcentration in the tract. However, after an investigation, the Department determined that public convenience and necessity would be served by issuance of the license because it will provide a convenience to hotel guests by serving alcoholic beverages to them and reducing traffic in the area, since guests will not have to leave the hotel to seek alcoholic beverages

elsewhere, and the premises is the only licensed hotel within a 1,000-foot radius to serve tourists and residents alike in Laguna Beach, a popular tourist destination with millions of visitors annually.

The Laguna Beach Police Department was contacted regarding the application for an alcohol license at the premises, and it responded with no objections. There have been no documented law enforcement problems at the premises. The Laguna Beach Planning Department issued a conditional use permit (CUP) to the premises on July 5, 2017, containing conditions relating to nighttime noise and lighting, restricting alcohol service to guests only, and prohibiting live entertainment. (Exh. P-3.) The applicant was issued an interim operating permit (IOP) by the Department, on July 28, 2018, allowing the premises to operate until a license is issued, subject to conditions.

Thirty residents are located within 100 feet of the premises, and each were contacted as part of the Department's investigation. The Department's investigations in connection with applications for liquor licenses must be made with a view to the protection of public welfare and morals. (*Schaub's, Inc. v. Department of Alcoholic Beverage Control* (1957) 153 Cal.App.2d 858 [315 P.2d 459].) One resident, the appellant herein, filed a protest against the issuance of the license raising two issues: 1) the premises is located in a residential area, and 2) the premises would interfere with the quiet enjoyment of her property due to increased noise and light.

On February 14, 2019, the applicant signed a Petition for Conditional License containing the following nine conditions:

- (1) Sales, service and consumption of alcoholic beverages shall be permitted in the pool area between the hours of 12:00 p.m. and 9:00 p.m. each day of the week.

(2) Sales, service and consumption of alcoholic beverages shall be permitted in the courtyard lawn area between the hours of 12:00 p.m. and 10:00 p.m. each day of the week.

(3) When the said gated pool and courtyard lawn area of the premises is being utilized for the sale, service, and consumption of alcoholic beverages, a premises employee shall be in attendance and maintain continuous supervision at all times of said area.

(4) There shall be no outdoor entertainment provided between the hours of 10:00 p.m. and 8:00 a.m. each day of the week.

(5) Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253.

(6) The petitioner(s) shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control as depicted on the most recently certified ABC-257 and ABC-253.

(7) Trash shall not be disposed of into outside trash or recycling containers between the hours of 10:00 p.m. to 7:00 a.m.

(8) The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.

(9) A sign shall be posted in a conspicuous space at the entrance/exit point of said patio/terrace/other area, which shall state "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT." Said sign shall measure no less than seven inches by eleven inches (7" x 11"), and contain lettering no less than one (1) inch height. (Exhibit D-14.) It was the Department's opinion that these conditions should alleviate any adverse impact from the issuance of the license.

(Exh. D-14.)

The Department is permitted to place conditions on a license "where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions. . . ." (Bus. and Prof. Code § 23800, subdivision (a).)

The administrative law judge (ALJ) issued a proposed decision on November 17, 2021, overruling the protest and recommending that the type-70 license be issued to the applicant, subject to conditions. The Department adopted the proposed decision in its entirety on December 22, 2021, and a certificate of decision was issued six days later.

Appellant thereafter filed a timely appeal contending: (1) the Department failed to address appellant's first protest issue, namely, that the area is residential, (2) the Department's decision fails to follow its own precedential decision, (3) the decision is contradictory in its findings and not supported by substantial evidence, and (4) the decision fails to comply with Department rule 61.4.

DISCUSSION

I

STANDARD OF REVIEW

This Board is bound by the factual findings in the Department's decision so long as those findings are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani) (2004)

118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

When findings are attacked as being unsupported by the evidence, the power of this Board begins and ends with an inquiry as to whether there is substantial evidence, contradicted or uncontradicted, which will support the findings. When two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department—all conflicts in the evidence must be resolved in favor of the Department's decision.

(*Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815]; *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106, 112 [28 Cal.Rptr. 74].)

Therefore, the issue of substantial evidence, when raised by an appellant, leads to an examination by the Appeals Board to determine, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. The Appeals Board cannot disregard or overturn a finding of fact by the Department merely because a contrary finding would be equally or more reasonable. (Cal. Const. Art. XX, § 22; Bus. & Prof. Code § 23084; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113]; *Harris, supra*, at p. 114.)

The California Court of Appeal has placed the burden of proof on the licensee in application matters. (*Coffin v. Alcoholic Bev. Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476-477, 594 [43 Cal.Rptr.3d 420] ["The burden of proof may properly be placed upon the applicant in application proceedings".]) Accordingly, the applicant bore the burden of proof at the administrative hearing to present evidence to establish that appellant's protest was unfounded and that it was entitled to the applied-for privileges of an on-sale general restrictive service license.

Additionally, in a protest matter, a protestant has the burden of establishing by testimony and other competent evidence that the bases for the protest are legitimate. If the applicant is thereafter able to establish that a protest is without proper justification, such as, for example, that the concerns expressed are “false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause”,² or that it has taken adequate steps to mitigate the concerns of the protestant,³ then the Department may appropriately conclude that the applicant has met its burden in establishing that the applied-for license should issue notwithstanding the protest. In the instant decision, the Department found that the applicant met its burden, and therefore overruled the protest and allowed the license to be issued.

II

RESIDENTIAL AREA

Appellant contends the Department failed to address her first protest issue, namely, that the area is residential — implying that there is a zoning violation issue. What appellant fails to note in its brief is that the ALJ addressed appellant’s attempt to reframe her protest to include a zoning issue at the administrative hearing, and ruled that zoning was not an issue to be considered. Instead, the ALJ ruled that the only issues to be considered at the administrative hearing were “whether the issuance of the applied [for] license would disturb the quiet enjoyment of nearby residents, under Rule 61.4, and outdoor hours of operation.” (1 RT at p. 18.) Furthermore, the ALJ

² Business and Professions Code § 24013 — grounds upon which the Department may reject a protest prior to a hearing thereon.

³ Such as: changes in business operations, agreement to the imposition of conditions, or physical changes to the premises — such as sound-proofing, installation of lighting, reconfiguration of entrances and exits or patron areas, etc.

specifically found that the premises is in compliance with local zoning ordinances. (Findings of Fact, ¶ 4.) It is settled law that the failure to raise an issue or assert a defense at the administrative hearing level bars its consideration when raised or asserted for the first time on appeal. (*Araiza v. Younkin* (2010) 188 Cal.App.4th 1120, 1126-1127 [116 Cal.Rptr.3d 315].) Accordingly, since the zoning issue was rejected at the administrative hearing, we need not address the issue further on appeal.

III

OTHER ISSUES ADDRESSED TOGETHER

Appellant's other issues, that the Department's decision fails to follow its own precedential decision; that the decision is contradictory in its findings and not supported by substantial evidence; and that the decision fails to comply with Department rule 61.4, will be addressed together as a single issue — namely, was there substantial evidence in the record to support the Department's determination that an on-sale general restrictive service license should be issued to the applicant, subject to the conditions imposed to mitigate the concerns of the protestant?

Rule 61.4 provides, in substance, that no retail license shall be approved where the proposed premises or its parking lot are located within 100 feet of a residence. However, the rule further provides an exception to that prohibition where the applicant establishes that the operation of the business would not interfere with the quiet enjoyment of the property of the residents. (4 Cal. Code Regs. § 61.4.)

Appellant maintains that the Department erred by not following its own precedential decision, No. 19-01-L, in regards to the application of rule 61.4. As the Department points out, appellant never raised the issue of the precedential decision

during the three days of hearings so this issue should be barred from consideration.

(*Araiza, supra.*) Nevertheless, we will address it briefly.

Appellant argues that the Department's precedential decision (in which the Department denied the issuance of a license on the basis that it would interfere with the quiet enjoyment of nearby residents) mandates denial of the license in this case — arguing that the circumstances in the two cases are indistinguishable. We disagree with that characterization, and agree with the Department (see RRB at p. 14) that there are indeed many factual differences between the two cases which the Department outlines in its Reply Brief. However, most importantly, as this Board observed in *Summit Energy Corporation California* (2001) AB-7585, at p. 11:

The Department must, and should, take a broader view than any single protestant, and must draw upon its expertise when determining what may flow from the issuance of a license. If a Rule 61.4 protestant's objection is treated as a veto, then any application for a license which could be granted with appropriate conditions would die stillborn.

Appellant would have us interpret precedential decision No. 19-01-L as standing for the proposition that any protestant claiming interference with the quiet enjoyment of their property should have veto power over whether the license is approved by the Department. As the Board said in *Summit Energy Corporation California*, and as we reiterate now, this is an untenable interpretation.

Rather, under rule 61.4, the ALJ is tasked with balancing the concerns of nearby residents with evidence presented by the applicant to establish that the operation of its business would not interfere with the quiet enjoyment of the property of those residents. This is a factual determination — *i.e.*, has the applicant taken adequate steps to mitigate the concerns of nearby residents?

Even if the Board wanted to reweigh the evidence and reach its own conclusions, it is prohibited from doing so. Our review of a decision of the Department is limited by statute to the following questions:

- (a) Whether the department has proceeded without, or in excess of, its jurisdiction.
- (b) Whether the department has proceeded in the manner required by law.
- (c) Whether the decision is supported by the findings.
- (d) Whether the findings are supported by substantial evidence in the light of the whole record.
- (e) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department.

(Bus. and Prof. Code § 23084.)

The Department has a broad discretion with respect to the issuance or denial of a license. As explained in *Koss*, we must be guided by the following principles:

In determining whether facts established by substantial evidence constitute good cause for concluding that issuance of a license will not be contrary to public welfare or morals, the department exercises a discretion adherent to the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion upon the same subject. If the decision reached is without reason under the evidence, the action of the department is arbitrary; constitutes an abuse of discretion; and may be set aside. Where the decision is the subject of choice within reason, the department is vested with the discretion of making the selection which it deems proper; its action constitutes a valid exercise of that discretion; and the appeals board or the court may not interfere therewith. [Citations.] Where the determination of the department is one which could have been made by reasonable people, the appeals board or the courts may not substitute a decision contrary thereto, even though such decision is equally or more reasonable in the premises. [Citations.]

(*Koss v. Department of Alcoholic Beverage Control* (1963) 215 Cal.App.2d 489, 496 [30 Cal.Rptr. 219].)

In the decision, based on the voluminous record and numerous factual findings, the ALJ found:

[T]he Applicant has made specific efforts to ensure the Premises is a good neighbor, and to protect the surrounding neighborhood from any adverse impact due to the Applicant's planned operation should the type-70 license issue. The Applicant agreed to be bound to more restrictive conditions (see Exhibit D I4, copy of Petition for Conditional License) and self-imposed restrictions on the Premises' operation to ensure the quiet enjoyment of nearby residents. . . . The evidence has established that the Applicant takes seriously its responsibility as a licensee. The preponderance of the evidence established that all of the Applicant's efforts along with the conditions imposed upon its license should it issue, will mitigate Protestant's concerns and provide that the Premises' operation should not interfere with nearby residents' quiet enjoyment of their property. (Findings of Fact ¶¶ 4, 38, 40, 41, 43, 53, 54, 61 to 63, 67.)

(Conclusions of Law, ¶ 9.) In short, the ALJ balanced the concerns raised by the appellant and made a determination that the applicant has taken adequate (and in some instances, extensive) steps to mitigate those concerns. This is the prerogative of the ALJ. Findings of Fact paragraphs 4, 38, 40, 41, 43, 53, 54, 61 to 63, and 67 address the myriad ways the conditions imposed on the license will mitigate appellant's concerns about light, noise, and hours of operation, as well as rebutting several of appellant's claims about problems. We find that the decision is supported by the findings and that the findings are supported by substantial evidence.

Appellant disagrees with the decision, and would have us reweigh the evidence in this matter and reach a different conclusion — something we are prohibited from doing when, as here, the decision is supported by the findings and the findings are supported by substantial evidence. We have carefully reviewed the extensive record in the matter, and find no error in the decision's findings or conclusions. It is not this Board's role to re-hear the case and reweigh the evidence — that is the exclusive role

of the ALJ and the Department. The decision is not arbitrary or unreasonable, but is amply supported by substantial evidence, and the Board cannot reweigh the evidence to reach a contrary conclusion simply because appellant disagrees with the outcome in this case.

ORDER

The decision of the Department is affirmed.⁴

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴ This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 *et seq.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:

LORETTA LEWIS

AGAINST THE ISSUANCE OF A LICENSE TO:

AR SPIRITS MANAGER, LLC
HOTEL JOAQUIN
985 NORTH COAST HIGHWAY
LAGUNA BEACH, CA 92651-1416

ON-SALE GENERAL RESTRICTIVE SERVICE
- LICENSE

SANTA ANA DISTRICT OFFICE

File: 70-587706

Reg: 19088640

CERTIFICATE OF DECISION

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on December 22, 2021. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

Sacramento, California

Dated: December 28, 2021

RECEIVED

DEC 28 2021

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:

Loretta Lewis,

AGAINST THE ISSUANCE OF AN
ON-SALE GENERAL RESTRICTIVE SERVICE
LICENSE TO:

AR Spirits Manager, LLC
DBA: Hotel Joaquin
985 North Coast Highway
Laguna Beach, California 92651-1416

Under the Alcoholic Beverage Control Act

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}
} **PROPOSED DECISION**

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter in Santa Ana on September 24, 2019, and thereafter by video conference in California, on October 5 and 6, 2021.

Lisa Wong, attorney, represented the Department of Alcoholic Beverage Control (the Department).

Michael Cho and Erin Oyama, attorneys, represented the Applicant, AR Spirits Manager, LLC.

William Adams, attorney, represented Protestant Loretta Lewis, who was also present. The Protestant was allowed to appear and participate in the hearing as a party pursuant to Government Code section 11500(b).

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on October 6, 2021.

ISSUES

The issue(s) to be determined are whether issuance of the applied-for license would be contrary to public welfare or morals on the basis that it would interfere with nearby residents' quiet enjoyment of their property under Rule 61.4¹, including noise, lighting and outdoor hours of operation.²

FINDINGS OF FACT

1. The pending application was filed with the Department on October 19, 2017. It seeks issuance of a type-70, on-sale general restrictive service license for premises located at 985 North Coast Highway, Laguna Beach, California (the Premises).³ A type-70 license would permit the Applicant to serve alcoholic beverages to the hotel's⁴ registered overnight guests and invitees under certain circumstances; a person walking-in from the street could not be served. Department Licensing Representative II Dang (hereinafter referred to as LR Dang) conducted a thorough investigation into the Applicant and the Premises with respect to the applied-for license. (Exhibit D2, copy of ABC-220P, signed and dated by LR Dang on January 15, 2019.) LR Dang visited the Premises on seven occasions at various times of the day between October 2017 to September 24, 2019.

2. The Premises is located on a busy, major thoroughfare, North Coast Highway, and situated between Fairview Street to the west and an alleyway and Wave Street to the east. There are residential buildings between the alleyway and Wave Street. (Exhibits D9, color copy of Google map, and D10, a color aerial/satellite map.) The Premises is located in a mixed-use residential and commercial area, with retail stores on North Coast Highway and residences surrounding the area.

¹ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

² At the beginning of the hearing on September 24, 2019, the undersigned indicated to all parties the issues which would be considered. There was no objection by the parties to the issues as stated by the undersigned. The Protestant attempted to introduce a new issue which was not part of her verified protest and to which the Applicant and Department objected. The undersigned sustained the objections thereto based on prejudice to the parties, maintaining that only those issues listed as part of the verified protest would be considered. The Department pointed out additional issues of noise and lighting, which the undersigned considered as part of whether issuance would disturb the quiet enjoyment of nearby residents.

³ The application indicates on the cover page that the Applicant also applied for a type-66 controlled access cabinet license. (Exhibit D2.)

⁴ Any reference in the decision to "the hotel" is to the Hotel Joaquin (the Premises.)

3. The Premises is a split-level, three-story hotel with 22 guest rooms. The Premises measures approximately 104 feet by 157 feet, at its longest measurement. (Exhibit D8, copy of ABC-253.) The Premises' street level includes a lobby/lounge area, fixed bar, terrace area where food is served, activity deck and 11 guest rooms. (Exhibit D7-A, copy of ABC-257, and exhibits P5-A, P5-B and P5-C.) The activity deck is located on the east side of the property along the alleyway. (Exhibits D8 and D10.) The Premises' lower level consists of a kitchen, storage room, office, three guest rooms, a pool and courtyard. (Exhibit D7-B, copy of ABC-257.) The courtyard is a lawned area located in the center of the hotel (and property), facing south toward the pool, surrounded on three sides by the two-story and multi-level hotel structure consisting of guest rooms. On the fourth side of the courtyard are six-foot high concrete walls, which cut off in the center with an open view of the pool. Those concrete walls which face the courtyard are lined with shrubs and two, two-story high Draco trees. (Exhibits D4-A, D4-B and P5-D.)⁵ The pool is located at the rear of the property, on the southwest side, and is enclosed with six-foot high concrete walls. Along Fairview Street the interior of the Premises' walls are lined with tall, lush trees and planters which serve as a sound buffer from the pool area. (Exhibits D6-A, D6-B and D6-C.)⁶ Fairview Street has a rising elevation grade as it reaches North Coast Highway, with the walls along the Premises' property line ranging in height from six feet to 25 feet and covered on the exterior with green hedge-like vegetation. (Exhibit D11.) The upper level of the Premises consists of eight (8) guest rooms and a trellis. (Exhibit D7-C, copy of ABC-257.) The Premises has 23 parking spaces reserved for hotel guests, which includes garage parking and open space parking along Fairview Street, as well as carport parking and open space parking along the alleyway. (Exhibits D7-B and D8.)

4. The Premises complies with local zoning requirements. A conditional use permit (CUP) was required and was approved by the City of Laguna Beach Planning Commission, as CUP No. 17-1055, on July 5, 2017, for the type-70 license. The CUP states the Premises' use is consistent with the purpose and intent of the Zoning Code and that the proposed use will have no substantial adverse effect upon abutting property in that alterations have been conditioned to mitigate any such effect. The CUP conditions include, but are not limited to, the following: "...4. The proposed use is consistent with the objectives and policies of the City's General Plan in that alcohol service would be limited to registered overnight guests of the hotel and the alcohol privileges would not substantially alter the operational characteristics of the existing hotel....20. Beer, wine, and distilled spirits shall be limited to on-site sales and consumption and shall be served in glass containers. 21. There shall be no live entertainment allowed. 22. Alcohol service shall be limited to registered, overnight guests of the hotel at the following areas

⁵ Exhibit D3 is a color photo of the courtyard taken in October of 2018, prior to its renovation. Exhibits D4-A and D4-B depict the courtyard after renovation.

⁶ Exhibit D5 is a color photo of the pool area in October of 2018, prior to its renovation. Exhibits D6-A, D6-B & D6-C are color photos taken after renovation of the pool area.

and hours: (1) lobby/lounge area from 10:00 a.m. to 1:00 a.m., (2) gated pool area from 12:00 p.m. to 9:00 p.m., and (3) gated interior courtyard from 12:00 p.m. to 10:00 p.m. Controlled access mini bars may be installed within each guest room....26. Guests shall be provided with full access to the communal kitchen facilities. Hotel staff shall ensure that the kitchen is maintained in good working condition with a full range of amenities for the preparation of substantial meals....28. The pool hours shall be limited to 8:00 a.m. to 9:00 p.m. daily.” (Exhibit P3.)

5. The Premises has been operating as a small, full-service boutique hotel and resort since July 28, 2018. Prior thereto the Premises was known as Laguna Beach Motor Inn and has been operating in some form or fashion as a hotel since 1946. The Premises retained the pool’s location from prior ownership. There are no documented law enforcement offenses associated with the location of the Premises since 1946.

6. The Premises’ location was not previously licensed. The Premises was issued an Interim Operating Permit (IOP)⁷ on July 28, 2018 and renewed thereafter. The Premises has been operating under the IOP with no incident, disciplinary history or documented law enforcement issues. Since issuance of the IOP there have been no complaints about the Premises’ operation other than by Protestant Lewis and another nearby resident Teri Hunter. No other nearby residents contacted the Department since issuance of the IOP regarding any type of unreasonable noise or lighting at or emanating from the Premises.

7. The Premises is not located within the immediate vicinity of any church or hospital and is not within 600 feet of any schools, public playgrounds, or non-profit youth facilities (otherwise referred to as consideration points).

8. The Laguna Beach Police Department (Laguna Beach PD) has jurisdiction over the area in which the Premises is located. The Laguna Beach PD does not provide statistical data within the meaning of Section 23958.4. On November 22, 2017, the Laguna Beach PD advised that it has no objection to the issuance of the applied-for license.

9. The Premises is located in census tract 626.04. Using the formula set forth in the Alcoholic Beverage Control Act, 19 on-sale licenses are permitted within this census tract. At the time of LR Dang’s investigation there were 20 on-sale licenses. As of the hearing, 19 on-sale licenses exist. The Premises would be the 20th on-sale licensed premises in the census tract if approved. Of the then 20 pre-existing licenses, there were 16 restaurants, including four Mexican restaurants, two pizza restaurants, two Japanese restaurants, three American restaurants, two Chinese restaurants, an Indian restaurant, a Thai restaurant, and one Italian restaurant. LR Dang also determined there to be a Saw

⁷ An interim operating permit temporarily allows an applicant to exercise the same privileges of the license being applied for pending the final outcome of the application process.

Dust Festival, Tivoli-Too (a wedding and event venue), Shady Canyon Golf Course, and Bacchus Bar and Bistro (a public premises).⁸

10. The Department conducted a survey of licensed premises within 1000 feet of the Premises, and found one on-sale licensed premises, a Chinese restaurant, with a type-41 on-sale beer and wine eating place license, which is open to the general public. There is no licensed hotel within a 1000-foot radius of the Premises.

11. On June 26, 2018, the Department received from the Applicant a letter describing how the Premises' operation meets public convenience or necessity. (Exhibit D12.) The Applicant states the Premises benefits the public by providing hospitality and lodging to tourists, business travelers, local vacationers, and residents with out-of-town guests. The Premises is a 22-room, full-service hotel, with an eight-seat fixed bar, dining seating for approximately 30 guests, a pool and lawned courtyard area. The Applicant states that by providing alcoholic beverages it will be very convenient for hotels guests and will reduce traffic which might otherwise be generated by guests driving to other locations to seek alcoholic beverages. The Applicant points out that 16 of the 20, then, on-sale licensed premises in the census tract are restaurants, and that the Premises is not a restaurant as it is not open for public dining or drinking. The Applicant maintains the Premises is unique in that it will be the only on-sale licensee operating as a hotel in the census tract. The Applicant states there are no other establishments like the Premises within the same census tract which offer full-service hotel to overnight guests along with gourmet food service for breakfast, lunch and dinner. The menu is seasonal with fresh, local, sustainable ingredients. The Applicant points out that the service of alcoholic beverages will be limited only to hotel guests and their invitees. The Applicant describes the Premises as "a petite resort nestled above Shaw's Cove" and "a gem hidden in plain sight along the Pacific's rich coastline." The Applicant further describes the Premises as "a refuge for the world traveler who revels in living off the beaten path, the adventurers who embrace the beauty of nature, and the lovers of life who appreciate the finest attention to detail." (Exhibit D12.)

12. The Department investigated the Premises and surrounding area. It determined Laguna Beach has approximately six million visitors annually and offers seven miles of unique coves and beaches, where visitors can explore sea caves, tide pools, oceanside bluffs, natural tide pools and sandy beaches. It determined Laguna Beach also offers year-round activities, such as a monthly art walk (with 40 gallery participants offering artist receptions, demonstrations, refreshments and live music), year-round whale watching cruises, and the Festival of the Arts (featuring original artwork by 140 of Southern California's most accomplished artists). The Premises is within walking

⁸ There was no evidence presented which of the 20 on-sale licensed premises no longer existed, to bring the license count to 19 at the time of the hearing.

distance to Main Beach Park (a beachfront park with a boardwalk, volleyball and basketball courts, a playground, and tide pool area) and Shaw's Cove (a small local beach nestled below Laguna Beach homes and popular among scuba divers, swimmers, surfers and beachgoers).

13. LR Dang concluded the Applicant established public convenience or necessity for the following reasons: (1) the Premises will provide a convenience to hotel guests by serving alcoholic beverages to them and reducing traffic in the area since guests will not have to leave the hotel to seek alcoholic beverages elsewhere, (2) the Premises is the only licensed hotel within 1000-foot radius to serve tourists and residents alike, in Laguna Beach, a popular tourist destination with millions of visitors annually who come to see the unique beaches and Shaw's Cove, popular among scuba divers and swimmers.

14. There are 30 residences within 100 feet of the Premises. The Department mailed to those residences a letter informing them of the applied-for license. Of the 30 residences, one resident responded and protested, Loretta Lewis. The Department determined Loretta Lewis to be the sole verified protestant. Ms. Lewis' residence is located at 176 Fairview Street in Laguna Beach, approximately 100 feet west of the Premises on the second level of a two-story residential building. Protestant Lewis has a clear view of the Premises' pool area and barriers. Separation factors include the city curb, sidewalks, Fairview Street (a two-way traffic road), a single-story private residence with shrubs in front of the residence, an approximate 10-foot yard space between the residence and the front of Protestant Lewis' residence. There also is a concrete wall along the Premises' property line along Fairview Street, which is covered with green vegetation on the Fairview facing side. That wall's height ranges from six feet to 25 feet because of the grade level of Fairview Street. On the interior of that wall facing the Premises' pool are tall lush trees and planters which serve as a separation factor and sound buffer from the pool area. The Premises grade level slopes down from North Coast Highway to the beach, which accounts for the difference in the wall height. (Exhibits P8, D6-A, D6-B, D10, and D11.)

15. Protestant Loretta Lewis appeared and testified at the hearing. Ms. Lewis is retired and currently owns some residential duplexes which she manages. Ms. Lewis said that 10 years prior to the hearing she worked for about 30 years in developing industrial real estate properties, as well as buying and selling residential duplexes. She was involved in the construction of five industrial parks.

16. Ms. Lewis has owned the property at 176 Fairview Street in Laguna Beach for 20 years and has lived there the last 8 years.⁹ There are two buildings on her property, the one-story front building closest to Fairview Street and a two-story building on the back of the lot, the latter in which she resides. (Exhibits D10 and D11.) Ms. Lewis says her two-story home is four stories above street level because the building at the front of her lot is built on top of a garage. The second story of Ms. Lewis' residence contains her bedroom, living room, kitchen, office, dining room, and balcony. Ms. Lewis spends the bulk of her time on the second level. The first floor of her residence has a television room, guest room, kitchenette, and small dining/meeting area. Ms. Lewis' first story of her home is level with the roof line of the single-story building at the front of her property, which is level with the top of the Premises' green screen block wall along Fairview Street. (Exhibits D5 and D6-B.)

17. In June of 2017, Ms. Lewis received a letter from the City of Laguna Beach advising of the change of hotel ownership from Laguna Beach Motor Inn to AR Spirits Manager, LLC, doing business as Hotel Joaquin. Ms. Lewis said she never had any issues with noise emanating from the hotel when it was Laguna Beach Motor Inn, even though she could hear people and children playing in the pool. She did call the police twice when a couple was fighting, and someone was loitering at the Laguna Beach Motor Inn.

18. Prior to the Planning Commission meeting in June of 2017, Ms. Lewis hired a local building architect, Anders Lasater, to help her interpret the Applicant's construction plans. She also believed that Mr. Lasater's involvement could help facilitate better communication with the Applicant's developer. At some point, Ms. Lewis read the CUP Staff Report prior to the CUP being issued. (Exhibit P16.) Ms. Lewis had no objections to the new ownership and construction of the Hotel Joaquin. Ms. Lewis recalls that construction of the Hotel Joaquin began around August of 2017 and finished in approximately September 2018. When the Applicant removed the vegetation on the block wall along Fairview Street (and prior to replanting) Ms. Lewis could see the Premises' pool area clearly, whereas before the removal of plants she did not see any part of the property. Ms. Lewis then became concerned about the potential noise and light impact on herself and her residence from the Premises, with lighting issues her "biggest concern." Ms. Lewis could see that potentially noise could become a problem with the removal of the green vegetation from the block wall. Ms. Lewis spoke with a sound person who recommended to her that any noise issues emanating from the Premises could be mitigated if the Premises' block wall was raised higher.

⁹ Ms. Lewis initially testified upon direct examination she resided at the 176 Fairview Street address for 10 years. Upon cross examination by Applicant's counsel Ms. Lewis said she resided at that address since 2013.

19. Ms. Lewis had at some point contacted the Applicant, through her consultant Anders Lasater's office, and spoke with Michael Gagnet, the Premises' consultant. Ms. Lewis understood from her conversations with Mr. Gagnet that the Hotel Joaquin would be a boutique hotel, offering wine, cheese and hors d'oeuvres for complementary happy hour to its guests, with the guest room kitchenettes being removed and a communal kitchen installed to enable guests to prepare their own meals. Since lighting was her main concern Mr. Gagnet assured Ms. Lewis that if she had any lighting issues all she had to do was to call him and he would take care of them. Ms. Lewis described her communications with Mr. Gagnet as 90 percent cordial and polite. She recalled Mr. Gagnet becoming upset when he learned she had filed a protest against issuance of the applied for license. Nonetheless, Mr. Gagnet continued to work with Ms. Lewis and her consultants to mitigate her concerns with the Premises.

20. Ms. Lewis also hired a landscape architect, Mr. Anselmo, and an electrician, Kevin Kondrat. Ms. Lewis' consultants submitted recommendations to Mr. Gagnet and the Applicant's hotel developers to address Ms. Lewis' lighting and sound concerns relating to the quiet enjoyment of her residence. Mr. Gagnet made himself available to, communicated and cooperated with Ms. Lewis and her consultants concerning their recommendations. (Exhibits A6, A7, A8 and A9.)

21. Ms. Lewis said that on certain days, from the time the Premises opened until September 12, 2019, the Premises affected how she enjoyed her home. She kept an Event Log of incidents that occurred between 2018 and 2019, some of which are listed below. (Exhibit P13¹⁰.)

22. On October 10, 2018, at 9:00 p.m., Ms. Lewis said she was disturbed by a dinner event at the Premises due to bright turquoise lights and noise from the event with preparation for the event and filming crews. There was no evidence Ms. Lewis contacted the Applicant about these issues.

23. On December 1, 2018, at 8:24 p.m., Ms. Lewis said she heard noise from the Premises, which began the day prior with people arriving to set up all day in preparation for a wedding and once the wedding began she heard sounds of people whooping, yelling and merry making, along with the dinner and bar noise after. Ms. Lewis claimed she could hear recorded music from the wedding in her bedroom with her windows closed. Ms. Lewis used her iPhone to capture an audio video recording of the "noise," while

¹⁰ The parties stipulated that any entries on the Event Log (Exhibit P13) beginning with September 24, 2019, and thereafter would be redacted and not considered as well as the totals under the heading note on the last page.

standing at the adjacent neighbor's property, which was played during the hearing¹¹ and admitted as Exhibit P10. There was no evidence Ms. Lewis contacted the Applicant about these issues.

24. Ms. Lewis said she emailed the hotel¹² on June 9, 2019, at 9:43 a.m. regarding noise, and received Mr. Neubert's reply which was "very nice, as always," with his apologies. Mr. Neubert explained that a guest had brought his own device to play music at the pool, which the staff stopped immediately upon becoming aware of it. (Exhibit P7.)

25. On July 13, 2019, at 5:24 p.m., Ms. Lewis emailed the hotel advising she was resting in her bedroom and could hear loud music and people in conversation. (Exhibit A32.)

26. On June 30, 2019, at 8:40 p.m., Ms. Lewis emailed the hotel advising, "In my bedroom, in bed, after a busy day. I can hear your [recorded] music as I lay here trying to rest. Can you please turn the volume down.[sic] I will also call." Ms. Lewis telephoned the Premises thereafter and left a voice message asking that they, "turn the music down." (Exhibits P9 and A31.)

27. Another event occurred on July 30, 2019, after 10:00 p.m., when Ms. Lewis said she was awoken from her sleep by people who were merry making on one of the Premises' balconies, located directly across from her balcony (on the same level). Ms. Lewis did not remember whether her doors/windows were open or not. Ms. Lewis recorded the audio and video with her iPhone from her balcony, which recording was played during the hearing and admitted as Exhibit P11. After recording the video/audio, Ms. Lewis called the police at 10:36 p.m. The police arrived at the Premises at 10:42 p.m., and found it "all quiet." Ms. Lewis' normal bedtime on weekdays is between 8:00 p.m. and 9:00 p.m. Her bedtime is the same on weekends, unless she goes out. Ms. Lewis said she recorded approximately five incidents. The Protestant did not proffer any other audio/video recordings, including audio recordings to reflect the sound she claimed to hear from her bedroom or within her home on certain dates.

28. On August 8, 2019, at 8:25 p.m., Ms. Lewis emailed the Premises informing them she was in her "bed and I can hear your music. Especially the electronics in the music. I think when you have the large window open or[sic] bounces off the pool wall with the radius and no plants. Shoots up and out to my second story. Appreciate your turning it down. Thank you!" (Exhibits P12 and A33.) Ms. Lewis described the "electronic" music as not a vocal, piano, guitar or any instrument, but something like disc jockey (DJ)

¹¹ The Protestant's attorney had the moderator start the video at 31 seconds into the recording ("31" appeared at the bottom left of the screen and "30" appeared at the bottom right of the screen.)

¹² Throughout the decision when it references Ms. Lewis emailing or calling the hotel, that refers to the Hotel Joaquin (the Premises.)

music from the DJ board. Ms. Lewis had at the time believed the music was emanating from inside the Premises through their telescopic glass doors at their lobby that open to the terrace/patio. The music was not emanating from the Premises. The Premises' recorded music that is played is not described as "electronic" or "DJ" music but ambient, background music. At 11:26 p.m. on August 8, 2019, Ms. Lewis emailed the Premises stating she called the hotel at 11:20 p.m., spoke with and advised the person who answered the telephone of loud talking and laughing coming from the hotel. The staff member said they appreciated the call and would inform the supervisor. (Exhibit A34.)

29. On August 15, 2019, Ms. Lewis said the Premises had a Hurley women's event going on around the pool area, with noise that began early in the day through the 6:00 p.m. cocktail hour, and thereafter the women moved to the lawn/courtyard area for dinner. All-the while during the cocktail and dinner hour Ms. Lewis said she could hear the laughing and cackling of the large group of women, whose voices, she said, were much louder than if there were individual guests. Ms. Lewis emailed the Premises at 9:16 p.m. claiming that she is in her bedroom and can hear music, whooping, hollering and talking. (Exhibit A29.) Ms. Lewis called the Premises and when she could not immediately get a live person on the telephone, she called the police. Ms. Lewis said the police arrived and the noise stopped, and shortly after the police left the noise erupted again and she called the police once more. Thereafter the noise stopped when the women exited the Premises at the Fairview Street gate and walked down to the beach.

30. Ms. Lewis recalled on August 17, 2019, the Premises had a men's retreat which began at the pool, and she could hear the deep voices of the men as they yelled across to each other. She said the men proceeded to the lawn/courtyard area to dine and engaged in loud talking. The men thereafter went to the bar area and the noise ended at 10:00 p.m. Then on August 18, 2019, at 4:30 a.m. Ms. Lewis heard three cars on Fairview Street, which dropped people off at the side gate, waking Ms. Lewis from her sleep. Ms. Lewis did not call the police for either incident. There was no evidence Ms. Lewis contacted the Applicant about these issues.

31. On August 18, 2019, Ms. Lewis cited other noise problems, claiming it was the Applicant's employees' cars beeping when they lock their vehicles upon arrival to work at 6:00 a.m., or an employee's motorcycle engine revving, or the staff talking amongst themselves when they either take their breaks in the driveway at Fairview Street by the parking garage or at the end of the night on the street when they leave for the night. There was no evidence Ms. Lewis contacted the Applicant about these issues.

32. August 20, 2019, 9:40 p.m. to 10:24 p.m., Ms. Lewis logged she was awakened by the sound of motorcycles and cars starting, which she claimed were the Applicant's employees. There was no evidence Ms. Lewis contacted the Applicant about these issues.

33. On August 24, 2019 the Premises hosted an evening wedding. Ms. Lewis said she could hear noise from the Premises starting August 23, 2019, with the wedding set-up, through to the wedding with microphone announcements in the lawn/courtyard area. At approximately 10:52 p.m. she said people were in the pool area and woke her from her sleep. Ms. Lewis looked out her balcony and saw fully dressed people near the pool, she heard the splash of a person entering the pool. Ms. Lewis called the Premises, when she received no immediate reply, she emailed the hotel to inform them that someone had fallen into the pool. Ms. Lewis then called the police who came to the Premises. After the police left Ms. Lewis called the police again.

34. On August 25, 2019, at 7:41 a.m. Ms. Lewis emailed the Premises advising she could hear, “loud and clear the dumping of glass into the trash on the alley¹³ ... and I am on the opposite side of the hotel on Fairview [Street].” In her email she pointed out, “I am hopeful by bringing this to your attention you will understand how sound travels here in our neighborhood.” (Exhibits P15 and A38.) Ms. Lewis acknowledged she did not see the glass being dumped in the trash but assumed it was alcoholic beverage bottles since there was a wedding at the Premises on August 24th, 2019. There was no evidence that it was the Applicant’s hotel staff who had disposed of debris in the trash receptacle at 7:41 a.m.

35. On September 2, 2019, at 10:02 p.m. Ms. Lewis emailed the Premises claiming she was in her bedroom and could hear glass being dumped into the trash cans, “as I am on the other side of the property it must be quite loud and disturbing to all the neighbors.” (Exhibits P14 and A36.) The Applicant’s general manager of the Premises, Mr. Neubert never received any complaints from any other neighbors about the Applicant’s staff disposing of trash in its trash receptacles. There was no evidence that it was the Applicant’s hotel staff who had disposed of debris in the trash receptacle at 10:02 p.m.

36. On September 3, 2019, at 9:40 p.m. Ms. Lewis emailed the Premises, advising she was in her bed getting ready to sleep and could hear music at 9:37 p.m. (Exhibit A37.) There was no evidence the music was emanating from the Premises.

37. Ms. Lewis says the Premises’ recorded music was a problem, seven days a week, prior to September 24, 2019, but not on or after that date. Prior to September 24, 2019, Ms. Lewis said she would get home around four or 5:00 p.m. on weekdays and in every room of her home she said she could hear the low-ambient recorded elevator music.

¹³ The ALJ deleted the words “off Wave,” since during cross-examination of Ms. Lewis by Applicant’s counsel, it was clarified that the alley is not off of Wave Street as Ms. Lewis wrote in her email, but rather the alley is between the Premises and Wave Street. Ms. Lewis described what she thought was the location of the Applicant’s trash receptacle, using Exhibit A1, as the black square intersecting the red-drawn line along the Applicant’s property line adjacent to the alley.

When she would stop to relax for the evening, she said she would hear the Premises' recorded music, and she did not like hearing "someone else's music in [her] home." Ms. Lewis closed her bedroom doors for relief from the sound.

38. Ms. Lewis acknowledged that she did not experience the issues of which she complained on or after September 24, 2019, but she claimed that prior to that date there was "always" some noise issue emanating from the Premises. As for the lighting, the Applicant had addressed and resolved her concerns. She says the Applicant, "now [has the lighting] to where it is very livable," and said they "just have the step lights and light at the palm tree after 10:00[p.m.] and the lighting before 10 is low and acceptable."

39. Ms. Lewis does not want the applied-for license denied outright to the Applicant but would like to see the following happen: (1) limit alcoholic beverage service at the pool to stop at sunset; (2) limit alcoholic beverage service in the lawn/courtyard area; (3) no outdoor events, such events and serving of dinner should be held inside the Premises with the doors closed in the evenings. (4) more restricted hours relating to disposing of trash in trash receptacles; (5) she would like to see condition eight regarding parking lot lighting expanded to the entire property; (6) she would like condition 4 to include no recorded music outdoors and limited to the inside lobby bar area; (7) Ms. Lewis compared two Petitions for Conditional License executed by Applicant dated July 19, 2018 and February 14, 2019, and questioned why condition 4 was changed from, "Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as depicted on the most recently certified ABC-257 and ABC-253," to "There shall be no outdoor entertainment provided between the hours of 10:00 p.m. and 8:00 a.m. each day of the week." (Exhibits P4 and D14). Ms. Lewis would like those two versions of condition 4 combined. During LR Dang's testimony she explained the reason the Department corrected condition 4 was because the initial version was very vague.

40. On June 26, 2018, the Department received from the Applicant a letter describing how the Premises' operation would not interfere with nearby residences' quiet enjoyment of their property. (Exhibit D13.) The Applicant plans to be a good neighbor and ensure the quiet enjoyment for the residents by, (1) restricting the hotel's restaurant and bar to registered guests and their invitees and prohibiting the general public from dining or drinking therein, (2) having staff 24 hours a day supervise hotel operations, (3) limiting outdoor hours of operation for the pool (12:00 p.m. to 9:00 p.m.) and courtyard (12:00 p.m. to 10:00 p.m.), (4) turning off pool area lights at 10:00 p.m. with the exception of the lights on the paths, steps and in the pool which must remain on for safety reasons, (5) maintaining a 25 foot wall covered with green vegetation to provide screening and mitigate noise, (6) reminding guests to keep quiet in outdoor areas, especially near 100 foot residents, (7) restricting the Premises' operations subject to conditions imposed by both the City of Laguna Beach's CUP 17-1055 and the Department, (7) training staff to manage guest areas and operational hours to maintain and control appropriate noise

levels, and (8) limiting the hours of alcoholic beverage service in the outdoor areas. The hotel has also installed double-paned windows, sound proofed the walls and floors, installed tall and lush landscaping, all in an effort to reduce noise levels outside of the hotel.

41. During LR Dang's multiple visits to the Premises and surrounding area she heard no noise emanating from the Premises; she mainly heard ambient noise from the neighborhood, such as a dog barking, cars driving by, or people walking and conversing on the street. She heard no unreasonable or excessive noise emanating from the Premises, nor did she hear any noise of a continuous nature from the Premises during her visits. LR Dang knocked on residential doors and spoke to some of the residents, including those on Wave Street. Some Wave Street residents voiced concern the Premises' activity deck was wide open so that a person, if they wanted, could possibly look into residential windows. The Applicant later addressed that concern by covering the activity deck with planters, trees and a glass partition to avoid guests on the deck from being able to look into residential windows.

42. During LR Dang's visit to the Premises on October 19, 2018, at approximately 7:00 p.m., Ms. Lewis invited LR Dang to observe the hotel from Ms. Lewis' balcony. While standing on the balcony looking at the Premises, the pool area lighting appeared reasonable to LR Dang, which she found projects up to the top of the Premises' trees and provides a soft glow. LR Dang found the Premises' lighting reasonable and was not intrusive to Ms. Lewis' residence or nearby residences. However, LR Dang did find a neighbor's porch light was a lot brighter than any of the Premises' lighting. During that same visit there was a 40-person event in the Premises' courtyard, which could not be seen from Ms. Lewis' balcony because the courtyard is blocked by the structure of the hotel and its guest rooms. From Ms. Lewis' balcony LR Dang was not able to hear any noise emanating from the Premises. Ms. Lewis acknowledged nothing could be heard and commented to LR Dang that it was a quiet night. LR Dang determined the tall wall along Fairview Street with the tall, lush trees lining the wall helped to block any noise emanating from the Premises to Ms. Lewis' balcony and nearby residents. At approximately 9:00 p.m., LR Dang went into the Premises and met with the Food and Beverage Manager, Ruth White. While inside the Premises, LR Dang could hear a reasonable noise level from the event which was contained within the courtyard. There was a person speaking at a microphone and young women in their 30's sitting at tables.

43. Based on the Department's investigation, LR Dang recommended conditions be placed upon the applied-for license should it issue, to mitigate Protestant Lewis' concerns. On February 14, 2019, the Applicant signed a Petition for Conditional License, agreeing that nine operating conditions be imposed upon its applied-for license to allay any concerns relating to the quiet enjoyment of nearby residents. Those conditions include that: (1) Sales, service and consumption of alcoholic beverages shall be permitted

in the pool area between the hours of 12:00 p.m. to 9:00 p.m. each day of the week. (2) Sales, service and consumption of alcoholic beverages shall be permitted in the courtyard lawn area between the hours of 12:00 p.m. to 10:00 p.m. each day of the week. (3) When the said gated pool and the courtyard lawn area of the premises is being utilized for the sales, service, and consumption of alcoholic beverages, a premises employee shall be in attendance and maintain continuous supervision at all times of said area. (4) There shall be no outdoor entertainment provided between the hours of 10:00 p.m. and 8:00 a.m. each day of the week. (5) Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253. (6) The petitioner(s) shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control as depicted on the most recently certified ABC-257 and ABC-253. (7) Trash shall not be disposed of into outside trash or recycling containers between the hours of 10:00 p.m. to 7:00 a.m. (8) The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences. (9) A sign shall be posted in a conspicuous space at the entrance/exit point of said patio/terrace/other area, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT." Said sign shall measure no less than seven inches by eleven inches (7"x11") and contain lettering no less than one (1) inch height. (Exhibit D14.)

44. The Department received complaints from Ms. Lewis and Ms. Hunter regarding the Premises. At some time thereafter, Department agents visited the Premises in an undercover capacity to investigate and ensure the Premises was in compliance with the ABC Act and/or regulations. Department agents visited the Premises multiple times, attempting to purchase alcoholic beverages as members of the general public. The undercover agents were refused service and turned away because they were not registered guests. The agents observed the Premises and surrounding area and did not notice any excessive noise or any noise emanating from the Premises. Some of the agents' visits/observations are as follows:

45. On Thursday, March 14, 2019, at approximately 9:30 p.m., upon Agent Gonzalmen's arrival at the Premises she did not hear any noise emanating therefrom. She entered the Premises in a plain clothes capacity. Employees informed her that the services of the restaurant bar were for hotel guests only. Agent Gonzalmen observed no alcoholic beverages being consumed in the pool area, the courtyard was unoccupied and there was no outdoor entertainment. The guests she did observe appeared to be orderly.

46. On Friday, March 15, 2019, at approximately 10:25 p.m. Agent Gonzalmen, upon arriving at the Premises, did not hear any noise emanating from the Premises. Upon entering the Premises, Agent Gonzalmen observed two patrons in the

restaurant/lobby/lounge area and the terrace/patio was closed. The courtyard lawn area was unoccupied. Agent Gonzalmen observed no alcoholic beverage consumption in the outdoor areas and no outdoor entertainment during her visit.

47. On April 10, 2019, Agent Gonzalmen returned nearby resident Teri Hunter's telephone call to the Department regarding complaints about the Premises. Agent Gonzalmen gave Ms. Hunter her Department cellular telephone number and email address. On Monday, April 22, 2019, Agent Gonzalmen received a call from Ms. Hunter and they discussed Ms. Hunter's concerns. Thereafter, Agent Gonzalmen planned an inspection of the Premises.

48. On Friday, May 3, 2019, at approximately 10:55 p.m. Agent Gonzalmen arrived at the Premises and observed it to be quiet and closed, with the curtains drawn and the lights in the interior appeared to be off. During each of Agent Gonzalmen's visits to the Premises she observed no condition violations. Agent Gonzalmen did not hear from Ms. Hunter again until August 17, 2019, when Ms. Hunter emailed Agent Gonzalmen.¹⁴

49. On Friday, September 13, 2019, at approximately 9:30 p.m. Agent Ramirez and supervisor Ward, sat in their vehicle at North Coast Highway and Fairview Street to observe the rear of the Premises' hotel area. (Exhibit D11.) Agent Ramirez did not hear any noise other than the occasional vehicle driving by; it was a quiet evening. At one point, a group of females walked past Agent Ramirez' vehicle from the direction of the beach toward the hotel. Agent Ramirez could hear them speaking. As the women reached the entrance of the hotel Premises at Fairview Street they stopped talking. Agent Ramirez observed nothing happening at the pool area. After approximately 45 minutes, the agents exited their vehicle and entered the Premises in a plain clothes capacity. Agent Ramirez observed only two people seated in the lobby/lounge area and otherwise the area was not busy at all. (Exhibit P5-B, color photo of bar/lobby/lounge area.) There was no live entertainment and no unreasonable or excessive noise. The agents sat at the fixed bar in an undercover capacity. Before the agents could order a drink, the on-duty, male bartender asked them if they were hotel guests and when they said they were not the bartender informed them of the Premises' policy that he could not serve them because they are not registered guests. At that point, after having been in the Premises for approximately three to five minutes, the agents left. The agents then sat back in their vehicle to observe the surrounding area and Premises. Agent Ramirez observed no condition violations during her investigation of the Premises that evening. Agent Ramirez saw no employees taking a break in the alley or streets outside of the Premises. She did not see any employee taking bottles or equipment out of the Premises' garage adjacent to Fairview. The agents left the Premises at approximately 10:30 p.m.

¹⁴ Agent Gonzalmen was not questioned about the content of the August 17, 2019 email.

(Applicant's Witness – Michael Gagnet)

50. Michael Gagnet appeared and testified at the hearing. Mr. Gagnet said he works for a management company, Auric Road, which owns Hotel Joaquin and he currently is the vice president of forward planning and development. Mr. Gagnet began working with the Applicant in May of 2016, as a consultant with Makar Properties, LLC, to assist in securing entitlement and oversee construction of the Joaquin Hotel property at 985 North Coast Highway in Laguna Beach.

51. On June 20, 2017, while working on behalf of the Applicant, Mr. Gagnet received a telephone call and an email from Christine Ayd¹⁵ of Anders Lasater Architects scheduling a meeting at the hotel site on June 27, 2017, with Mr. Gagnet, Ms. Ayd and her client, Loretta Lewis, to review the proposed changes to and remodel of the hotel. (Exhibit A2.) Prior to the meeting Mr. Gagnet provided a PDF of the proposed floor plans for the hotel to Ms. Ayd. Mr. Gagnet's job duties included working with local residents to provide them with all the information about the hotel plans, to be transparent with them and to assure the process ran as seamlessly as possible prior to the planning commission hearing. Mr. Gagnet, on multiple occasions, met and communicated with Ms. Lewis and her architect, lighting and landscape consultants during the design and construction stages of the hotel, as well as after construction, to address Ms. Lewis' concerns. (Exhibits A2, A4, A5, A6, A7, A8 and A9.)

52. On January 19, 2018, Ms. Lewis' landscape architect submitted landscape architectural and lighting design update requests with specific instructions, including that for pool and courtyard lights they use RGB fixtures with adjustable lighting, they remove the pool's deck up-lights and down lights, change the stair tread lighting to the shade of amber or reduce the number of step lights by nine, replace overhead floodlights in the parking area and building with adjustable level beam spread fixtures, update gate arch downlights, on and off timing of lights should be "set to a slow fade up that is inverse of setting sun, which will provide a seamless transition of the sun...off time will start with a slow fade of 30 minutes to provide a very gentle transition from on to off levels by 10 pm," and angle all landscape up-lights away from Ms. Lewis' property. Requests for specific wattage were also made. Requests also included that the landscaping along Fairview include planting a 12-foot tall landscape buffer screen between the pool deck area and Ms. Lewis' property, and Ms. Lewis' consultant requested that specific trees¹⁶

¹⁵ Referred to as Christine Miller in the said email.

¹⁶ Ms. Lewis requested that five Bottle palms replace the five planned Kentia palms, and two Dragon trees or Japanese pittosporum be planted instead of the proposed Carrotwood trees flanking the parking entrance adjacent to the alley to ensure the trees do not exceed 20 feet in height at maturity. She requested that either three more Aloe excelsa, 12-inch in height, be planted along the edge of the pool deck or three additional 12-foot high Pittosporum tenuifolium be planted. (Exhibit A10.)

be planted which have a maximum height of 20 feet so as not to detract from Ms. Lewis' view past the Premises. (Exhibit A10.)

53. Mr. Gagnet worked to mitigate Ms. Lewis' concerns as requested through her consultants. Per Ms. Lewis' request the Applicant eliminated the gate arch down light fixtures and all three tree-mounted downlights. The number of lights within the pool area were adjusted by removing three up-lights, and the Applicant ensured that none of the remaining up-lights pointed toward 176 Fairview Street. The Applicant reduced the number of stair lights from the originally approved planning commission plans, as well as adjusted the gate light on the south side of the pool, the security light on the garage at Fairview Street and eliminated the security light along the alleyway. The Applicant installed louvered or cone-capped lights to spray light down onto the steps or the face of the riser. The overhead flood lights were replaced with can lights on motion sensors so the spillage would only shoot directly down. (Exhibit A12, color photo of soft blue pool deck stairway lighting contrasted against the stark white lighting at the adjacent neighbor west of the Premises, taken from Ms. Lewis' balcony.)

54. Mr. Gagnet, on behalf of the Applicant, attended two administrative design review board meetings¹⁷ to accommodate Ms. Lewis' requests, and made changes to the prior approved planning commission plans, by increasing the size and type of planting along the north wall to create a green screen along the Fairview wall and eliminate any adverse lighting and view-blocking issues, as well as some other planting along the pool. The Applicant addressed Ms. Lewis' concern at the south wall of the pool by raising its height per her request, so that it was equal to the height of the pilaster of the existing gate. Ms. Lewis thanked Mr. Gagnet in emails and was appreciative of the Applicant's changes it made to accommodate her requests. (Exhibits A4, A5 and A6.) The Applicant spent in excess of \$15,000 to accommodate Ms. Lewis' concerns, which also resulted in incurred delays. One example of a delay occurred when Ms. Lewis proposed more accommodations at a publicly noticed hearing, which resulted in a 45-day delay requiring the Applicant to reapply for a second public hearing. No other nearby neighbor or member of the public, other than Ms. Lewis, asked the Applicant to make design changes to the hotel.

55. The Applicant was not able to accommodate all of Ms. Lewis' requests such as: (1) The specific manufacturer lighting brand she requested was too expensive, so alternatives were implemented, and the Applicant had to stick by the city's wattage dictates for health and safety reasons. (2) The Kentia palms were retained pursuant to the Applicant's landscape architect, who worked in Laguna Beach for many years, and who

¹⁷ Mr. Gagnet testified that the design review board meeting is an informal meeting conducted by the planning and zoning director in Laguna Beach with a committee of approximately four people discussing all issues, if an agreement is reached that is the end of it, if no agreement is reached either party may request an administrative design review board hearing.

advised that the Kentia palms are slow growers and very similar to the Bottle palms. (3) Ms. Lewis' request to trim the Norfolk Island Pine to 20 feet in height was adjusted to 26 feet due to the City of Laguna Beach's landscape requirements that it be maintained at 30 feet. By trimming the Norfolk Island Pine to 26 feet the Applicant kept it in line relative to the ridge line at the south side of the building which was 26 feet high. (4) The Carrotwood trees in the parking lot were retained instead of the requested Dragon trees, with the addition of other plants along Fairview Street to meet the city's guidelines for plantings along streets. (5) While the Applicant did add three Dragon trees along the wall at Fairview Street on the north side of the pool, instead of the requested Pittosporum tenuifolium the Applicant planted Podocarpus. (6) The Applicant installed courtyard lighting approved by the CUP. (7) While the Applicant installed all of its lighting on dimmers as requested, the timers for turn-off were set according to the City of Laguna Beach's requirements rather than Ms. Lewis' requests. The city requires all up-lights and mounted lights be turned off at 10:00 p.m. (8) The Applicant also set the pool step lights to turn off at 10 p.m. The only lighting left on after 10:00 p.m. is the lighting inside the pool for safety reasons.

(Applicant's Witness – Reinhard Neubert)

56. Reinhard Neubert appeared and testified at the hearing. Mr. Neubert has been the general manager at the Premises since 2018. He describes the Premises as a "very small boutique hotel."

57. The Premises has a policy in place that requires staff to walk the perimeter of the Premises to take daily noise readings to check the decibel/noise level to ensure it complies with the City of Laguna Beach's noise ordinance.

58. Mr. Neubert requested from the Laguna Beach PD and received a "Calls For Service Report" of noise complaints made to the Laguna Beach PD about the Premises. The report lists the caller's name, date and time of the call, the time police are dispatched to and arrive at the location of the claimed incident, the complaint made and the result of the police investigation. (Exhibit A20¹⁸.) The Premises has never been cited for noise violations by either the Laguna Beach PD or the City of Laguna Beach.

59. The Calls For Service Report lists two residents who made noise complaints to the police about the Premises, namely Loretta Lewis and Teri Hunter. Teri Hunter resides in the apartment building across the street from the Premises, with a window of her

¹⁸ The parties stipulated that Exhibit A20, at pages 7, 8, 9, 17 and 27 list Teri Hunter as the person who called the Laguna Beach PD to lodge a complaint, and that on page 10, box 10, Teri Hunter is listed as the second reporting party, with Loretta Lewis the first reporting party listed.

apartment facing Fairview Street and the Premises. (Exhibits D5¹⁹ and D6-B.) Teri Hunter made noise complaints as follows: January 20, 2019, at 6:49 p.m., reporting event at hotel with people yelling, cheering, police arrived 12:00 a.m. and determined it was a yoga event earlier with yoga chants; March 2, 2019 at 9:50 p.m. reporting very loud people in the hotel pool, requesting the police not respond but only document her call, police disposition “no paper taken;” on March 8, 2019 at 4:07 p.m. reporting loud females at hotel pool area, loud delivery trucks and employees, police arrived 5:46 p.m. and found no excessive noise coming from the hotel; on March 9, 2019 at 2:49 p.m. reporting people in hotel pool yelling/splashing, police arrived at 2:53 p.m., searched the Premises with disposition of “no paper taken;” on March 31, 2019, with Ms. Lewis having called at 10:42 p.m. reporting an event in the courtyard, Teri Hunter was the second reporting party, the police arrived at 10:43 p.m. and determined their complaints to be “UNFOUNDED” with “NO NOISE COMING FROM THE HOTEL;” on July 30, 2019 at 10:36 p.m., reporting loud subjects laughing on the south side of the hotel, police arrived at 10:42 p.m., found “ALL QUIET BUT [advised] STAFF;” On August 31, 2019, at 11:33 p.m. reporting loud noise coming from the hotel, police arrived 11:48 p.m. and determined the noise was not emanating from the hotel, the “HOTEL IS QUIET – PINCREST 415 MUSIC HOUSE WAS IN LINE OF SIGHT – THEY HAVE BEEN [advised] TO TURN DOWN THE MUSIC.” (Exhibit A20.)

60. Ms. Lewis made noise complaints to the Laguna Beach PD as follows: on March 31, 2019, with disposition “UNFOUNDED” (described above); on July 14, 2019 at 11:34 p.m. reporting loud subjects on the hotel patio, Fairview side of hotel above garage, who keep going in/out, the police arrived at 12:01 a.m., conducted a search of the Premises, with disposition “advised/complied;” on August 9, 2019 at 11:23 p.m. reporting loud [electronic] music coming from the hotel, police arrived 11:28 p.m., searched the Premises, with disposition “advised/complied.” [Mr. Neubert investigated and determined the electronic music Ms. Lewis heard on August 9, 2019, was not emanating from the Premises.] Three additional complaints were made on August 15, 24 and 25, 2019, which are described more fully below. The police did not cite the Premises for noise violations on any of these above-referenced service calls. (Exhibit A20.)

61. On June 9, 2019 at 4:22 p.m., Mr. Neubert emailed Ms. Lewis, in reply to her email that same day at 9:43 a.m. complaining of music played poolside at the hotel on Saturday afternoon, June 8, 2019, disturbing her and her guests on her deck and while inside her home. Mr. Neubert apologized to Ms. Lewis explaining that once the staff became aware a guest was playing music from his own device at the pool the guest(s) were advised it was not allowed and the staff “stopped the music immediately.” Mr. Neubert assured

¹⁹ Exhibit D5 depicts the beige/yellow apartment building on the right portion of the photograph. Based on Ms. Lewis’ testimony one of Teri Hunter’s apartment windows is visible in the photograph, which is the second window from the top of the building at the utility pole and Premises’ palm tree.

Ms. Lewis all hotel staff are aware of the no-music rule at the pool deck. (Exhibit P7.) Mr. Neubert testified the Premises does not permit any guest to play their own music anywhere at the Premises.

62. On August 4, 2019, at 7:40 p.m., Ms. Lewis emailed the hotel, which Mr. Neubert received, wherein she said she could hear music playing inside her home. (Exhibit A15.) Mr. Neubert, who was home in Laguna Beach at the time, immediately got in his vehicle, drove to the Hotel Joaquin and walked around to investigate. Mr. Neubert could not hear any music at the pool and the music level at the courtyard was very low. At 8:07 p.m. that same night, he replied to Ms. Lewis via email to apologize and asked if it was better. Ms. Lewis did not respond.

63. On August 9, 2019, at 11:15 p.m., Ms. Lewis emailed the hotel, which Mr. Neubert received, saying she was trying to go to sleep, that the Premises' electronic music was quite loud, and requested it be turned down. (Exhibit A35.) Mr. Neubert investigated and determined there was only one guest on the patio, and the only recorded music playing at the hotel was a station called, "Gray-V," which is ambient, background music; it was not electronic music. The courtyard music was turned off at 10:00 p.m. and the music playing inside the hotel lobby turned off at 10:30 p.m. (Exhibit A18.) The electronic music Ms. Lewis heard was not emanating from the Premises.

64. Ms. Lewis called the Laguna Beach PD on August 15, 2019 at 10:05 p.m. reporting loud people hooting and hollering, laughing all day at the hotel. The police arrived at 10:11 p.m., searched the Premises, with a disposition of "advised/complied" and no citation issued to the hotel. (Exhibit A20.) At 10:24 p.m. the Premises' food service manager, Tibe Pal, emailed Mr. Neubert advising the police stopped by the hotel at 10:15 p.m. to check on a noise complaint. Then again at 10:36 p.m. Tibe Pal emailed Mr. Neubert to advise that an officer stopped by again, wherein Ms. Pal and George walked the Premises with the officer, who found all was fine and did not observe any noise level from the hotel exterior. (Exhibit A13.)

65. On August 24, 2019, at 10:52 p.m. Ms. Lewis called the Laguna Beach PD to report a loud wedding event at the Premises. The police arrived at the Premises at 10:56 p.m. and investigated. The police did not cite the Premises for a noise violation, with a disposition of "advised/complied." At 11:50 Ms. Lewis called the Laguna Beach PD to report loud talking, whooping at the wedding reception at the Premises. At 11:54 p.m. the police arrived at the Premises and conducted a search of the Premises, which was quiet. (Exhibits A19 and A20.) The police did not detect any noise or music at the hotel and did not cite the hotel for a noise violation. On August 24, 2019, the Premises' staff supervisor/ambassador, Michael Maldonado, filed an interior document entitled a "Hotel Joaquin Pass On" notation that on August 24, 2019, at 11:45 p.m. he walked the three

Laguna Beach PD officers around the Premises, which was “very quiet,” and the officers remarked to Mr. Maldonado “how quiet the property was.” (Exhibit A19.)

66. On August 25, 2019, at 12:11 a.m., Ms. Lewis called the Laguna Beach PD to report a party making noise in the hotel pool area. The police arrived at 12:17 a.m., and searched the Premises, with a disposition of “advised/complied.” (Exhibit A20.) That same morning Tibe Pal emailed Mr. Neubert advising that the police came to the hotel due to a noise complaint, and that Ms. Pal spoke with the officers and no noise citation was issued to the Premises. (Exhibit A14.)

67. On September 3, 2019, at 10:07 p.m., Ms. Lewis emailed the hotel which Mr. Neubert received, advising she could hear the sound of a guitar vocalist in her bedroom and asked to quiet the music. (Exhibits A16 and A17.) Mr. Neubert was baffled by the accusation as the Premises had no live entertainment and he did not hear any music when he investigated the Premises. On September 4, 2019, at 6:16 p.m. Mr. Neubert emailed Ms. Lewis suggesting the sound may have been coming from a neighbor’s home.

68. Mr. Neubert testified the Premises does not play music outdoors except that on the terrace/patio and in the courtyard recorded ambient background music is played from speakers and the music is turned off at 10:00 p.m. The same recorded music is played at any event held at the Premises. There are no speakers in the pool area. Mr. Neubert said that no guest has ever complained that the hotel music was too loud or in general about noise at the hotel. In fact, he said that unsolicited guest reviews on TripAdvisor.com say the hotel is quiet and relaxing. TripAdvisor guest reviews described the Premises in March of 2019 as “the room was quiet,” in July of 2019 “the pool is quiet and peaceful,” and in August of 2019 a description of the Premises as a “very calming and relaxing atmosphere.” (Exhibit A21.)

69. Mr. Neubert enforces the conditions agreed to by the Applicant and ensures they are followed by employees. (Exhibit D14, copy of Petition for Conditional License.) Every employee completes alcoholic beverage service training including, but not limited to, restricted hours of alcohol sales, service and consumption in designated areas relating to conditions 1 and 2. Specific staff are assigned to each shift, seven days a week, to supervise the pool area when alcoholic beverage sales, service and consumption occurs therein pursuant to condition 3. The pool attendants ensure no one leaves the Premises with alcoholic beverages. Mr. Neubert says there is no live entertainment at the Premises. Staff routinely monitor the area under the Premises’ control to prevent loitering and maintain the area is free of litter per conditions 5 and 6. Trash is not disposed of into outside trash or recycling containers between the hours of 10:00 p.m. and 7:00 a.m. Mr. Neubert said that while the staff try to dispose of the trash after 8:00 a.m. and before 9:00 p.m. on most days, it otherwise complies with condition 7. Mr. Neubert said the only person who has complained about the lighting at the Premises was Ms.

Lewis and the Applicant has addressed those concerns prior to the opening of the Premises. The Premises complies with the lighting requirement of condition 8. The Premises has signs posted on both sides of all gates that state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT," in compliance with condition 9. (Exhibit A26, color photo of one of the gates leading from the pool area out to one of four parking lots.)

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution delegates the exclusive power to license the sale of alcoholic beverages in this state to the Department of Alcoholic Beverage Control.

2. Business and Professions Code section 23958²⁰ requires the Department conduct a thorough investigation to determine, among other things, if the Applicant and the Premises qualify for a license, if the provisions of the Alcoholic Beverage Control Act have been complied with, and if there are any matters connected with the application which may affect public welfare or morals. It provides, in part, that the Department shall deny an application for a license if the Applicant or the Premises do not qualify for a license under the Act.

3. In a protest matter, the Applicant bears the burden of establishing it is entitled to a liquor license from the start of the application process until the Department makes a final determination.²¹

4. In cases involving an application for an original license or the premises-to-premises transfer of a retail license, rule 61.4²² provides that no such license shall be issued if the premises or its parking lot is located within 100 feet of a residence. An exception to this prohibition exists if the Applicant establishes that the operation of the business would not interfere with such residents' quiet enjoyment of their property.

5. There are 30 residences located within 100 feet of the Premises. As such, rule 61.4 applies. (Finding of Fact ¶14.) Ms. Loretta Lewis protested issuance of the applied-for license on grounds that it would disturb the quiet enjoyment of her property in relation to noise, lighting and outdoor hours.

6. The Department conducted a thorough investigation into Ms. Lewis' protest concerns. LR Dang made multiple visits to the Premises and surrounding area at varying times of

²⁰ All statutory references are to the Business and Professions Code unless otherwise noted.

²¹ *Coffin v. Alcoholic Beverage Control Appeals Board*, 139 Cal. App. 4th 471, 43 Cal. Rptr. 3d 420, (2006).

²² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

the day and night. Prior to the opening of the Premises on July 28, 2018, the Applicant addressed Ms. Lewis' lighting concerns, which were her "biggest concern." On October 19, 2018, LR Dang stood on Ms. Lewis' balcony with Ms. Lewis, and observed that the Premises' lighting provides a soft, non-intrusive glow. LR Dang found the Premises' lighting reasonable and was not intrusive to Ms. Lewis' residence or nearby residences. Both LR Dang and Ms. Lewis heard no noise from Ms. Lewis' balcony despite an approximate 40-women event occurring in the secluded Premises' courtyard. LR Dang determined the tall wall along Fairview Street with the tall, lush trees lining the wall helped to block any noise emanating from the Premises to Ms. Lewis' balcony and nearby residents. Multiple Department agents made numerous visits to the Premises and observed no unreasonable noise or violations. Agents found no condition violations when they visited the Premises in an undercover capacity. On each occasion, when agents attempted to purchase alcohol at the Premises, the Applicant's bartender and employees refused to serve the undercover agents because they were not registered guests of the hotel. The Premises has never been cited for noise violations by either the Laguna Beach PD or the City of Laguna Beach. (Findings of Fact ¶¶ 1, 41, 44 to 46, 48, 49, and 58.)

7. While there will be the normal ambient sounds from the Premises' operation as a small boutique hotel, any concern of the Protestant will be mitigated by the Premises' restrictive CUP and Department conditions upon its type-70 license as well as its planned operation. The Applicant has proven to be a good neighbor, responding to Ms. Lewis' complaints and accommodating the numerous recommendations and changes made by her consultants to mitigate and address Ms. Lewis' concerns. Ms. Lewis acknowledged as much, stating that on June 9, 2019, Mr. Neubert's reply was "very nice, as always," she thanked Mr. Gagnet in emails and was appreciative of the Applicant's changes it made to accommodate her requests. Ms. Lewis also acknowledged that she has had no noise complaints since September 24, 2019. The Applicant has gone above and beyond to address Ms. Lewis' concerns and complaints. There is no reason to believe they will not continue to do so. (Findings of Fact ¶¶ 4, 24, 38, 40, 41, 43, 53, 54, 61 to 63, 67.)

8. The Laguna Beach PD had no objection to the issuance of the applied-for license. Great weight is given to law enforcement's approval of the applied-for license. (Findings of Fact ¶ 8.)

9. Furthermore, the Applicant has made specific efforts to ensure the Premises is a good neighbor, and to protect the surrounding neighborhood from any adverse impact due to the Applicant's planned operation should the type-70 license issue. The Applicant agreed to be bound to more restrictive conditions (see Exhibit D14, copy of Petition for Conditional License) and self-imposed restrictions on the Premises' operation to ensure the quiet enjoyment of nearby residents. Staff will supervise hotel operations 24 hours a day, remind guests to keep quiet in outdoor areas, especially near 100-foot residents, and

be trained to manage guest areas, maintain and control appropriate noise levels. The Applicant installed double-paned windows, sound proofed the Premises' walls and floors, planted tall, lush landscaping, raised the height of the south wall by the pool, all in an effort to reduce noise levels outside of the hotel. The Applicant trimmed trees to maintain Ms. Lewis' view. The Applicant eliminated the gate arch down light fixtures and three tree-mounted downlights, removed three pool up-lights which pointed toward 176 Fairview Street, reduced the number of stair lights, installed louvered lights, replaced overhead flood lights with can lights on motion sensors so spillage would only shoot directly down, and installed all lighting on timers. The evidence has established that the Applicant takes seriously its responsibility as a licensee. The preponderance of the evidence established that all of the Applicant's efforts along with the conditions imposed upon its license should it issue, will mitigate Protestant's concerns and provide that the Premises' operation should not interfere with nearby residents' quiet enjoyment of their property. (Findings of Fact ¶¶ 4, 38, 40, 41, 43, 53, 54, 61 to 63, 67.)

10. Section 23789 provides that the Department is specifically authorized to refuse to issue any retail license for premises located (a) within the immediate vicinity of churches and hospitals or (b) within 600 feet of schools and public playgrounds or nonprofit youth facilities. In the present case, there are no consideration points. (Finding of Fact ¶ 7.)

11. Section 23958.4 sets forth a two-prong test for determining whether an area has an over-concentration of licenses. The first prong relates to the number of reported crimes in the relevant reporting district, while the second relates to the number of licenses within the relevant census tract. An area is over-concentrated if either prong is met. Even if an area is over-concentrated, the license may still issue if the Applicant demonstrates that public convenience or necessity would be served.

12. With respect to the first prong, section 23958.4 provides that a reporting district is high crime (and, therefore, over-concentrated) if it has a 20 percent greater number of reported crimes, as defined, than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency. In the present case, the Laguna Beach PD does not provide statistical data within the meaning of Section 23958.4. However, as stated above, the Laguna Beach PD has no objection to the issuance of the applied-for-license. (Findings of Fact ¶ 8.)

13. The second prong of section 23958.4 provides that, with respect to on-sale retail licenses, a census tract is over-concentrated if the ratio of on-sale licenses to population in the census tract in which the applied-for premises is located exceeds the ratio of on-sale licenses to population in the county in which the applied-for premises is located. The Premises is located in census tract 626.04. Using the formula set forth in the Alcoholic Beverage Control Act, 19 on-sale licenses are permitted within this census tract. At the time of LR Dang's investigation there were 20 on-sale licenses. As of the

hearing, 19 on-sale licenses exist. The Premises would be the 20th on-sale licensed premises in the census tract if approved. The on-sale license count will increase should the applied-for license issue. The area in which the Premises is located has an over-concentration of licenses based on license count. (Finding of Fact ¶ 9.)

14. Since the area in which the Premises is located has an over-concentration of licenses, a determination of public convenience or necessity is necessary before a license may issue. Public convenience or necessity has been met. The Applicant Premises provides a small boutique hotel and resort to meet the needs of the community in a way that they would not otherwise experience anywhere else. In other words, the Premises offers a unique, specialized service that is not available from any of the other on-sale licensed premises in the area, including the entire census tract. (Findings of Fact ¶¶ 2, 3, 5, 11, 12, and 13.)

15. Alternately, and without regard to census tracts, an excess number of licenses in a given area is also grounds for denying an application. Unlike the statutory definition of over-concentration, there is no set formula for determining what constitutes an excess number of licenses; rather, the overall impact of the license, should it issue, must be examined. The two over-concentration issues overlap to some degree and, while legally separate, are factually intertwined.

16. While there is one on-sale licensed premises within a 1,000-foot radius of the Premises, it is a Chinese restaurant, with a type-41 on-sale beer and wine eating place license, which is open to the general public, wholly unlike the Premises. There is no licensed hotel within a 1000-foot radius of the Premises. Given the mixed residential and commercial area and with Laguna Beach, as a popular tourist destination, receiving approximately six million visitors annually, one other on-sale licensed premises within a 1,000-foot radius is not excessive. (Finding of Fact ¶ 10.)

17. In determining the credibility of a witness, as provided in section 780 of the Evidence Code, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing, including the manner in which the witness testifies, the extent of the witness' capacity to perceive, to recollect, or to communicate any matter about which the witness testifies, a statement by the witness that is consistent with any part of the witness' testimony at the hearing, and the opportunity of the witness to perceive any matter about which the witness testifies.

18. If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code, section 412.)

19. In balancing Evidence Code sections 412 and 780 against Ms. Lewis' testimony, Ms. Lewis' contentions that (1) she always heard noise emanating from the Premises, (2) she could hear noise from the Premises in her bedroom or home with the windows closed, (3) the volume of the noise was the same in her bedroom on December 1, 2018, as at the adjacent neighbor's property are disbelieved for the following reasons.

20. Ms. Lewis presented conflicting and inconsistent testimony and the manner in which she testified tends to disprove the truthfulness of portions of her testimony. On December 1, 2018, Ms. Lewis claimed she could hear recorded music from the wedding in her bedroom with her windows closed. It is questionable as to why she then chose to provide an audio/video recording of the Premises from a neighbor's property (Exhibit P10) rather than from her own bedroom or property. It is incredulous, and found to be an exaggeration, that the volume heard from the exterior of the adjacent neighbor's property was "the same" as inside the interior of Ms. Lewis' closed windowed home.

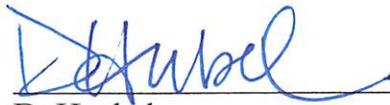
21. The undersigned does not take lightly that Ms. Lewis was, in fact, disturbed by noise emanating from the Premises on certain occasions. However, the exaggerated manner in which she testified, claiming she "always" heard noise from the Premises is disbelieved. Ms. Lewis made assumptions many times that the noise she heard was coming from the Premises. The evidence established there were multiple times the noise she complained of was not emanating from the Premises. On March 31, 2019, the police found Ms. Lewis' noise complaint "UNFOUNDED" with "NO NOISE COMING FROM THE HOTEL." On August 8 and 9, 2019, Ms. Lewis claimed electronic music was emanating from the Premises, but the preponderance of the evidence established that it was not. Mr. Neubert credibly testified the Premises only plays ambient background music. Further, at the time Ms. Lewis claimed to hear the electronic music, the Premises' music had already been turned off. On August 24, 2019, four minutes after Ms. Lewis called the police, the police did not detect any noise or music at the Premises. Ms. Lewis acknowledged that on August 25, 2019, she did not see glass being dumped in the trash but assumed it was alcoholic beverage bottles since there was a wedding at the Premises on August 24th, 2019. There further was no credible evidence that it was the Applicant's hotel staff who had disposed of debris in the trash receptacle on August 25, or September 2, 2019. On August 31, 2019, at 11:33 p.m., Ms. Lewis reported loud noise coming from the hotel, but when the police arrived 11:48 p.m. they determined the noise was not emanating from the hotel, the "HOTEL IS QUIET – PINCREST 415 MUSIC HOUSE WAS IN LINE OF SIGHT – THEY HAVE BEEN [advised] TO TURN DOWN THE MUSIC." Again, on September 3, 2019, Ms. Lewis claimed the sound of a guitar vocalist was emanating from the Premises. Mr. Neubert credibly testified the sound was not from the Premises as it had no live entertainment and he heard no music when he investigated, suggesting the sound was from a neighbor's home. The Applicant has acknowledged when it is responsible for noise emanating from its Premises in relation to Ms. Lewis' complaints. There is no reason the Applicant would admit to some noise and deny other sounds. The

undersigned finds credible the Applicant's witness testimony that the noise was not emanating from the Premises on certain occasions.

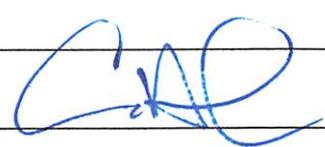
ORDER

The protest of Loretta Lewis is overruled. The type-70 on-sale general restrictive service license shall issue to AR Spirits Manager, LLC, subject to the conditions set forth in the Petition for Conditional License.

Dated: November 17, 2021



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date: <u>12/22/21</u> _____

