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Attorneys At Law

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Walter Drobenko

February 11, 2022

Dear Mr. Edwin;

I am submitting in one email 2 attachments.

The first attachment is the CB 3 Liquor License Application Questionnaire with Exhibits. This attachment was previously emailed to you on January 31, 2022.

Exhibit "A" Approved DOB Plans

Exhibit "B" Certificate of Occupancy for 236 and 238 East 9th Street

Exhibit "C" Photo of the posting

Exhibit "D" NYS SLA Mapping Reports

Exhibit "E" Block Information

Exhibit "F" Menu

Exhibit "G" Photos

Exhibit "H" Permit for Hookah (which is being renewed) & Open Restaurant Approval.

Exhibit "I" SLA Administrative Law Judge Decision.

The second attachment is the Signatures of Neighbors and additional supporting material.

EXHIBIT "A"

SIGNATURES

248 Signatures from the residents and residents from adjoining building

EXHIBIT "B"

DEPARTMENT OF BUILDINGS PRINTOUT

Reflecting no open complaints or violations

EXHIBIT "C"

NYC DEPARTMENT OF HEALTH

Reflecting no current health violations

EXHIBIT "D"

NYC BUSINESS PROFILE

Reflecting various licenses and reflecting no current violations

EXHIBIT "E"

7 Criminal Certificates of Disposition for tickets that were issued by the Sheriff's Department on August 7, 2020

EXHIBIT 'F'

The Cancellation Order dated January 25, 2021 listing 24 alleged violations. Please note that most of the violations were alleging that the licensee did not conform with all applicable building codes, and or fire, health, safety and government regulations. However, the Building Department, the Fire Department, Health Department did not issue any violations mentioned in the Cancellation Order and the 24 paragraphs of alleged violations. See attached Exhibit "B" "C" & "D" evidencing that the Building Department, Fire Department and the Health Department did not issue any violations for the alleged violations that were set forth in the 24 paragraphs of the cancellation order.

EXHIBIT 'G'

Summary of Due Process Failures in the ALJ proceedings and findings.

EXHIBIT "H"

Police Precinct 311 report regarding alleged Noise Complaints.

Unfortunately, the website/portal does not provide access to any details of 311 complaints from 2020. Specifically, the relevant period of time for our purposes in regards to the 311 complaints is July 16th 2020 through August 6th 2020. The former is the first day that we were open since being forced to shut down dine-in services on March 15th 2020 after a national emergency was declared and executive orders were put in place. The latter is the night that the SLA and a COVID task force raided Cloister Café twice and subsequently suspended the liquor license the following morning, coercing us to shut down.

However, thankfully the SLA did provide details on the 311 complaints in their memorandum of law in opposition to our motion for a preliminary injunction in one of their exhibits that was filed on August 24th 2020. I have attached pertinent pages of the aforesaid memo of law to this email as a PDF titled "311 complaints.pdf". There are significant details that I will outline below which I want to draw your attention to:

As shown on page 3, the search for 311 jobs at 238 East 9th Street yielded 35 complaints/service requests. Please note the date range on the upper left hand corner of page 3, which shows that the 311 search encompassed all complaints from 01/01/2020 through 08/16/2020. We can deduce that Cloister Café received 0 complaints while it was open from 01/01/2020 through 03/15/2020, the day that dine-in services were suspended due to the executive order surrounding the virus. It is vital to note that the level of ambient music played during the above-mentioned period with 0 complaints was at the same level, through the same sound system, as the music played after Cloister Café re-opened on July 16th 2020 for a period of 3 weeks, which is when all 35 of the complaints were submitted.

Please note the time stamp of every complaint, specifically the time "occurred," "received," and "last updated at." You can see that every single complaint was investigated by the NYPD and updated the same night that the complaint occurred and was received. Given that I was managing the café every night, I can attest to the NYPD visiting us almost every night that we received a complaint. They would stop by and say that they received a complaint about noise, and almost always they would comment on the fact that they couldn't hear anything from the entrance to the cafe. There were numerous occurrences where I either invited the officers into the garden to check out the level of noise, or they asked if they could come into the garden and see/listen for themselves. Every single time, the officers would say that there was no issue with the level of music and the complaints likely stemmed from the fact that the entire city was shut

down for upwards of 5 months and people got used to the silent nights.

It is important to note that there was never an instance that Cloister Café received any sort of fine/ticket/summons for excessive noise or noise pollution as a result of a noise complaint. Please take a look at the “resolution action” of each noise complaint. An overwhelming majority were labeled “10-90X” (meaning that the complaint was unfounded/unproven), or “10-90Y” (meaning the complaint was unnecessary). Again, if the level of noise was egregious, it would have been reflected in the updated 311 complaint after the assigned NYPD unit performed their visit/inspection and the business would have received a fine/ticket/summons. However, this was never the case.


If you take a look at the caller information on each of the 311 complaints, we can see that Cloister Café had multiple complaints from 4 different people over the relevant time period. A majority of the complaints came from 3 individuals: Chad Uy, Chris Zitelli, and Tristain Bourassin. Now, if the level of noise was so excessive as to cause public/neighborhood outrage, as is being purported by the SLA, then surely there would be multiple complaints from way more than 4 people. This “public outrage” line of reasoning utilized by the SLA to try to justify cutting Cloister Café’s liquor license hours significantly is not supported at all by the facts and details from these 311 complaints.

One possible underlying reason to consider for these complaints is the notion that the callers sincerely thought that Cloister Café was not legally allowed to operate past 11PM during the period of time in question. This was the case multiple times when Cloister Café was visited by the NYPD and Sheriff’s Office on multiple occasions during the 3 week span. I had to explain to officers on various occasions that the rules put forth by the Mayor’s Office and the NYC Office of Nightlife in conjunction with the Open Restaurants Program, the Department of Transportation and the Department of Health and Mental Hygiene specifically stated the following: “NYC Open Restaurant application does not cover usage that falls within private property (i.e. backyard, patio etc). This language can be found on page 8 of the “NYC Restaurant-bar-reopening-toolkit-july-2020.pdf” which I have attached to this email. More importantly, on page 11, the toolkit explicitly states that “If you are utilizing private outdoor space for dining to which you previously had rights, then the closing time for that space remains the same as it was pre-COVID-19 as stipulated by your Community Board agreement or county hours and all municipal ordinances.”

I could not send it in one attachment because the file is too big for one attachment.

If you have any questions do not hesitate to contact me. Thank you, in advance for your cooperation.

Very truly yours,



Walter Drobenko



THE CITY OF NEW YORK
 MANHATTAN COMMUNITY BOARD 3
 59 East 4th Street - New York, NY 10003
 Phone (212) 533-5300
 www.cb3manhattan.org - mn03@cb.nyc.gov

Paul Rangel, Board Chair

Susan Stetzer, District Manager

Community Board 3 Liquor License Application Questionnaire

Please email echan@cb.nyc.gov by 12pm the Friday before the meeting with the following items:

NOTE: ALL ITEMS MUST BE SUBMITTED FOR APPLICATION TO BE CONSIDERED.

- Photographs of the inside and outside of the premise.
- Schematics, floor plans or architectural drawings of the inside of the premise.
- A proposed food and or drink menu.
- Petition in support of proposed business or change in business with signatures from residential tenants at location and in buildings adjacent to, across the street from and behind proposed location. Petition must give proposed hours and method of operation. For example: restaurant, sports bar, combination restaurant/bar. (petition provided)
- Notice of proposed business to block or tenant association if one exists. You can find community groups and contact information on the CB 3 website:
http://www.nyc.gov/html/mancb3/html/communitygroups/community_group_listings.shtml
 (this is not required but strongly suggested if a relevant group exists)
- Proof of conspicuous posting of notices at the site for 7 days prior to the meeting (please include newspaper with date in photo or a timestamped photo).

Check which you are applying for:

- new liquor license alteration of an existing liquor license corporate change

Check if either of these apply:

- sale of assets upgrade (change of class) of an existing liquor license

Today's Date: 1/31/2022

Is location currently licensed? Yes No Type of license: Previously had On Premise Full License

If alteration, describe nature of alteration: _____

Previous or current use of the location: Restaurant Cafe & Bar

Corporation and trade name of current license: The Cloister East Inc. d/b/a Cloister Cafe

APPLICANT:

Premise address: 236-238 East 9th Street, New York, NY 10003

Cross streets: 2nd Avenue and 3rd Avenue

Name of applicant and all principals: NICHOLAS DROBENKO

Trade name (DBA): CLOISTER CAFE

PREMISE:

Type of building and number of floors: BRICK WALK UP - CELLAR AND 1ST & YARD

Does premise have a valid Certificate of Occupancy, including for any back/side yard or roof use?

Yes No What is maximum NUMBER of people permitted 196

What is the zoning designation (check zoning using map: <http://gis.nyc.gov/doitt/nycitymap/> - please give specific zoning designation, such as R8 or C2): R8B

PROPOSED METHOD OF OPERATION:

What are the proposed days/hours of operation? (Specify days and hours each day and hours of outdoor space, if applicable) MONDAY - SUNDAY 11 A.M TO 4 A.M.

Will any other business besides food or alcohol service be conducted at premise, i.e., retail? Yes No

If yes, please describe what type: NON TOBACCO HOOKAH LOUNGE LICENSED WITH DEPARTMENT OF HEALTH

Number of indoor tables? 14 -see plans Total number of indoor seats? 28

How many stand-up bars/bar seats are located on the premise (number, length, and location) 1 stand up bar 2 bar seats, L shape, 10 ft. l by 6 ft. - in front portion of restaurant

(A *stand-up bar* is any bar or counter -with seating or not- where you can order, pay for, and receive alcohol)

Does premise have a full kitchen? Yes No

Does it have a food preparation area? Yes No (If any, show on diagram)

Is food available for sale? Yes No If yes, describe type of food and submit a menu see attached menu

What are the hours the kitchen will be open? 11 a.m. to 4 a.m.

Will a manager or principal always be on site? Yes No If yes, which? manager & principal

How many employees will there be? 8

Do you have or plan to install French doors accordion doors or windows?

Will there be TVs/monitors? Yes No (If Yes, how many?) 2

Will premise have music? Yes No

If Yes, what type of music? Live musician DJs Streaming services/playlists

If other type, please describe RADIO & PRE-RECORDED MUSIC

What will be the music volume? Background (conversational) Entertainment (live music venue level) Please describe your sound system: 7 SPEAKERS WITH MIXING CONTROL BOARD

Will you host any promoted events, scheduled performances, or any event at which a cover fee is charged? If Yes, what type of events or performances are proposed and how often? NO

If promoted events, please explain the nature in which you plan to promote? Social media / online ads / outside promoters? N/A

How do you plan to manage vehicular traffic and crowds on the sidewalk caused by your establishment? Please attach plans. (Please do not answer "we do not anticipate congestion.") MANAGEMENT

WILL MONITOR AND DO CROWD CONTROL

Will there be security personnel? Yes No (If Yes, how many and when) _____

How do you plan to manage noise inside and outside your business so neighbors will not be affected? Please attach plans. MUSIC PLAYED AT AMBIANT LEVEL & MONITORED WITH DECIBEL METER

Is sound proofing installed? Yes No

If not, do you plan to install sound proofing? Yes No

Are there current plans to use the Open Restaurants program for the sale or consumption of alcoholic beverages outdoors? (includes roof & yard) Yes No If Yes, describe and show on diagram: Applicant will use sidewalk and street seating as approved by DOT and Open

Restaurant Program located in front of the premise.

APPLICANT HISTORY:

Has this corporation or any principal been licensed for sale of alcohol previously? Yes No

If yes, please indicate name of establishment: The Cloister East Inc.

Address: 238 East 9th Street, NY NY 10003

Community Board # 3

Dates of operation: Principal operated and managed Cloister Cafe from 1987 to 2021

Has any principal had work experience similar to the proposed business? Yes No If Yes, please attach explanation of experience or resume. Note: failure to disclose previous experience or information hampers the ability to evaluate this application.

Does any principal have other businesses in this area? Yes No If Yes, please give trade name, address and describe the business _____

Has any principal had SLA reports or action within the past 5 years? Yes No If Yes, attach list of violations and dates of violations and outcomes, if any.

Attach a separate diagram that indicates the location (**name and address**) and total number of establishments selling/serving beer, wine (B/W) or liquor (OP) for 2 blocks in each direction. Please indicate whether establishments have On-Premise (OP) licenses. Please label streets and avenues and identify your location. Use letters to indicate Bar, Restaurant, etc. The diagram must be submitted with the questionnaire to the Community Board before the meeting.

LOCATION:

How many licensed establishments are within 1 block? 17 - see attached SLA printout

How many On-Premise (OP) liquor licenses are within 500 feet? 56 - see attached SLA printout

Is the premise within 200 feet on the same street of any school or place of worship? Yes No

COMMUNITY OUTREACH:

Please see the Community Board website to find block associations or tenant associations in the immediate vicinity of your location for community outreach. Applicants are encouraged to reach out to community groups, but it is not required. Also use provided petitions, which clearly state the name, address, license for which you are applying, and the hours and method of operation of your establishment at the top of each page. (Attach additional sheets of paper as necessary)

We are including the following questions to be able to prepare stipulations and have the meeting be faster and more efficient. Please answer per your business plan; do not plan to negotiate at the meeting.

1. My license type is: beer & cider wine, beer & cider liquor, wine, beer & cider
2. I will operate a full-service restaurant, specifically a (type of restaurant) American Mexican Brazilian restaurant, or I will operate a Restaurant and Cafe with a full liquor license with a kitchen open and serving food during all hours of operation OR with less than a full-service kitchen but serving food during all hours of operation OR Other _____
3. My hours of operation will be:
 Mon 11 a.m. to 4 a.m.; Tue 11 a.m. to 4 a.m.; Wed 11 a.m. to 4 a.m.;
 Thu 11 a.m. to 4 a.m.; Fri 11 a.m. to 4 a.m.; Sat 11 a.m. to 4 a.m.;
 Sun 11 a.m. to 4 a.m.. (I understand opening is "no later than" specified opening hour, and all patrons are to be cleared from business at specified closing hour.)
4. I will not use outdoor space for commercial use (including Open Restaurants) OR My sidewalk café hours or other outside hours (including Open Restaurants) will be 11 a.m. to 4 a.m. on private courtyard property. Open restaurant/ sidewalk cafe 11 a.m. to 12 a.m.
5. I will employ a doorman/security personnel: _____
6. I will install soundproofing, _____

7. I will close any front or rear façade doors and windows at 10:00 P.M. every night or when amplified sound is playing, including but not limited to DJs, live music and live nonmusical performances, or during unamplified performances or televised sports.
- I will have a closed fixed façade with no open doors or windows except my entrance door, which will close by 10:00 P.M. or when amplified sound is playing, including but not limited to DJs, live music and live nonmusical performances, or during unamplified performances or televised sports.
8. I will not have DJs, live music, third-party promoted events, any event at which a cover fee is charged, scheduled performances, more than _____ DJs per _____, more than _____ private parties per _____
9. I will play ambient recorded background music only.
10. I will not participate in pub crawls or have party buses come to my establishment.
11. I will not have unlimited drink specials, including boozy brunches, with food.
12. I will not have a happy hour or drink specials with or without time restrictions OR I will have happy hour and it will end by 7 p.m.
13. I will not have wait lines outside. I will have a staff person responsible for ensuring no loitering, noise or crowds outside.
14. I will conspicuously post this stipulation form beside my liquor license inside of my business.
15. Residents may contact the manager/owner at the number below. Any complaints will be addressed immediately. I will revisit the above-stated method of operation if necessary in order to minimize my establishment's impact on my neighbors.

Name: NICHOLAS DROBENKO

Phone Number: 646-773-1107

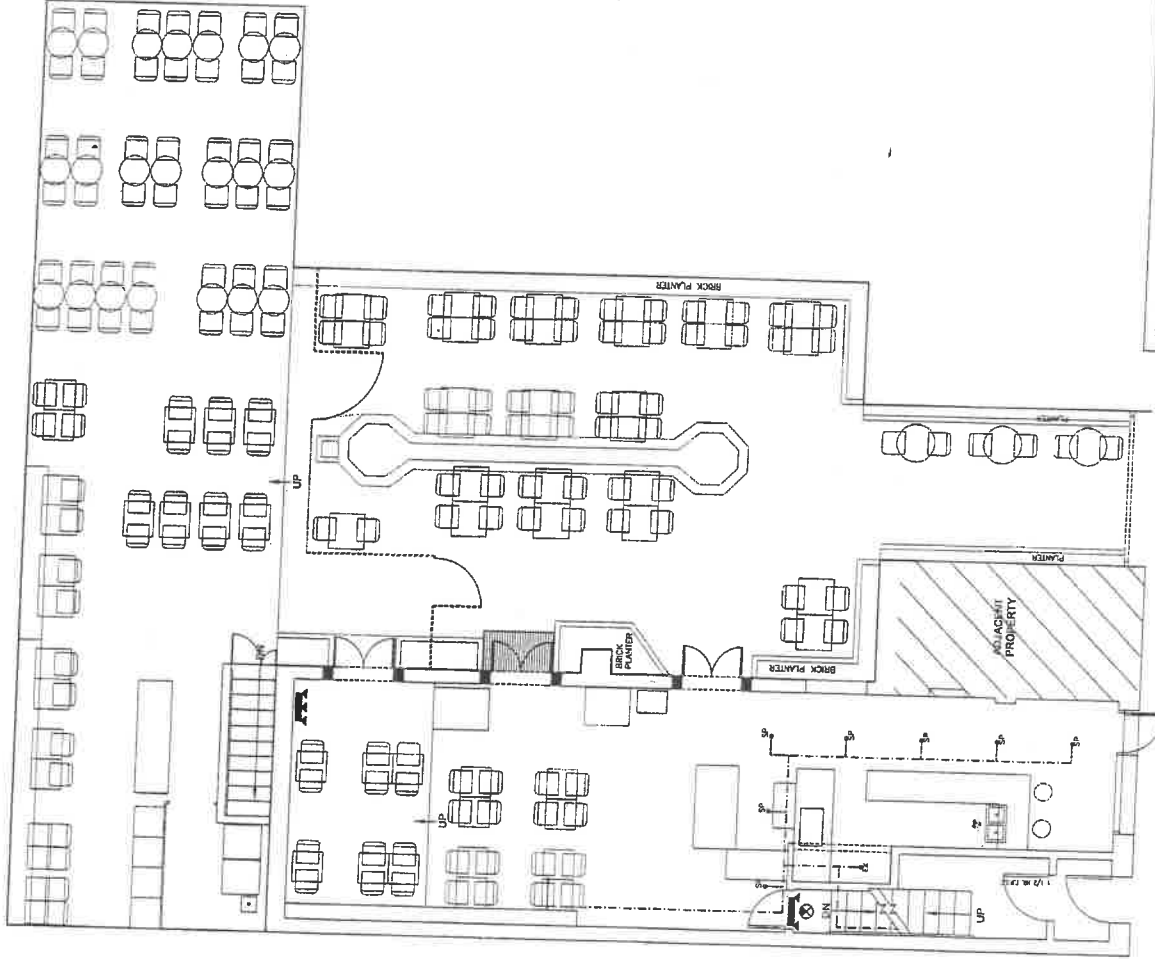
EXHIBIT "A"

SPRINKLER HEAD COUNT:

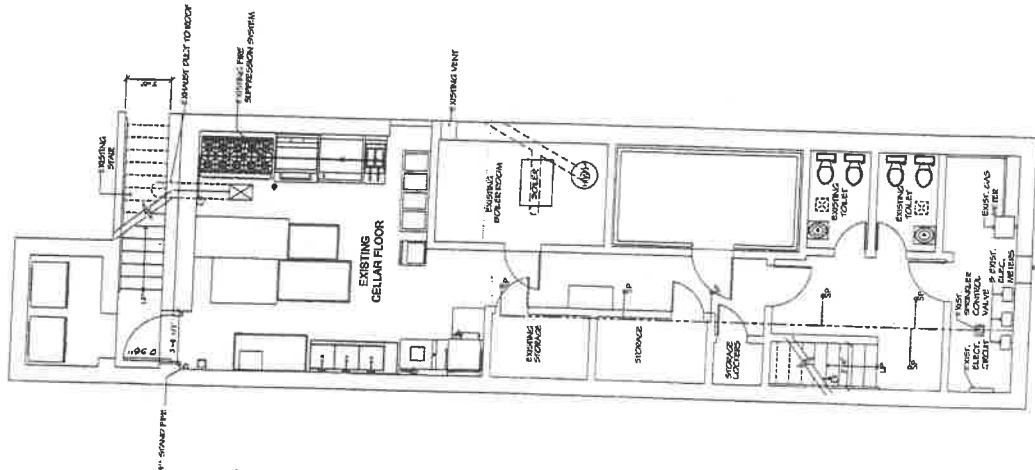
- CELLAR**
 1 EXISTING SPRINKLER HEAD
 6 NEW SPRINKLER HEAD
- FIRST FLOOR**
 1 EXISTING SPRINKLER HEAD
 7 NEW SPRINKLER HEAD

LEGEND:

- EX EXISTING SPRINKLER HEAD
 SP NEW SPRINKLER HEAD
 --- EXISTING SPRINKLER RISER
 --- NEW 3" SPRINKLER BRANCH
 --- NEW 1" SPRINKLER BRANCH



2 EXISTING FIRST FLOOR PLAN
 Scale: 1/4" = 1'-0"



1 EXISTING CELLAR FLOOR PLAN
 Scale: 1/4" = 1'-0"

NOTE:
 - FIRE SUPPRESSION ANNUAL SYSTEM FILED UNDER
 APPLICATION NUMBER 17226/2004
 - THIS FILING AS PER 2001 39066

NOTE:
 THERE IS NO CHANGE IN USE, OCCUPANCY, EGRESS OR
 OPEN SPACE UNDER THIS APPLICATION.

DRAWING TITLE: SPRINKLER LAYOUTS, NOTES, AND DETAILS
 PROJECT: 238 EAST 5TH STREET, NEW YORK, NY 10003
 DRAWING NO. 9P-00102
 PRANTO DESIGN GROUP L.L.C.
 43-38 166 STREET, FLUSHING N.Y. 11358
 DATE: 06-04-19
 SCALE: (9/17) 647.204
 DRAWN BY: AD
 PROJECT NO. AD NOTED



NO:	REVISION:	DATE:

OPEN RESTAURANT PROGRAM

EXHIBIT "B"

Certificate of Occupancy

CO Number: 121692329F

This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. *This document or a copy shall be available for inspection at the building at all reasonable times.*

A.	Borough: Manhattan	Block Number: 00464	Certificate Type: Final
	Address: 238 EAST 9 STREET	Lot Number(s): 32	Effective Date: 03/08/2019
	Building Identification Number (BIN): 1006744	Building Type: Altered	
This building is subject to this Building Code: Prior to 1968 Code			
<i>For zoning lot metes & bounds, please see BISWeb.</i>			
B.	Construction classification: 3	(Prior to 1968 Code designation)	
	Building Occupancy Group classification: A-2	(2014/2008 Code)	
	Multiple Dwelling Law Classification: None		
	No. of stories: 4	Height in feet: 40	No. of dwelling units: 0
C.	Fire Protection Equipment: None associated with this filing.		
D.	Type and number of open spaces: None associated with this filing.		
E.	This Certificate is issued with the following legal limitations: None		
Borough Comments: None			



Borough Commissioner



Acting

Commissioner

Certificate of Occupancy

CO Number: **121692329F**

Permissible Use and Occupancy						
All Building Code occupancy group designations below are 2008 designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
CEL	5	OG	A-2		6	STORAGE, MECHANICAL & COOKING, FOOD PREP, AND ACCESSORY USE TO THE 1ST FLOOR.
OSP	74	OG	A-2		6	ACCESSORY SEATING FOR RESTAURANT AT REAR YARD
001	62	100	A-2		6	EATING AND DRINKING ESTABLISHMENT
EGRESS EASEMENT CRFN#2015000259684						
END OF SECTION						



Borough Commissioner



Acting

Commissioner

END OF DOCUMENT

Certificate of Occupancy

CO Number: 122382830F

This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. *This document or a copy shall be available for inspection at the building at all reasonable times.*

A.	Borough: Manhattan	Block Number: 00464	Certificate Type: Final
	Address: 236 EAST 9 STREET	Lot Number(s): 31	Effective Date: 02/09/2018
	Building Identification Number (BIN): 1089795	Building Type: Altered	
This building is subject to this Building Code: Prior to 1968 Code			
<i>For zoning lot metes & bounds, please see BISWeb.</i>			
B.	Construction classification: 1-E	(1968 Code designation)	
	Building Occupancy Group classification: A-2	(2014/2008 Code)	
	Multiple Dwelling Law Classification: None		
	No. of stories: 1	Height in feet: 6	No. of dwelling units: 0
C.	Fire Protection Equipment: None associated with this filing.		
D.	Type and number of open spaces: None associated with this filing.		
E.	This Certificate is issued with the following legal limitations: None		
Borough Comments: None			



Borough Commissioner



Commissioner

Certificate of Occupancy

CO Number: **122382830F**

Permissible Use and Occupancy						
All Building Code occupancy group designations below are 2008 designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
OS P	60	OG	A-2		6	OUTDOOR SEATING AREA FOR ADJACENT EATING&DRINKING ESTABLISHMENT AT LOT #32
ACTIVE EASEMENT CRFN 2015000259684,EGRESS PROVIDED FOR ADJACENT PROPERTY 238 EAST 9TH STREET.						
END OF SECTION						



Borough Commissioner



Commissioner

END OF DOCUMENT

EXHIBIT "C"

**NEIGHBORING RESIDENTS
VECINOS DE LA COMUNIDAD**

THE CLOISTER EAST 1st / FLOWER CAFE 646-773-1107
Company Name / Contact Info

Plans to open a: **RESTAURANT CAFE BAR** *SIDE BY SIDE RESTAURANT*
Planifique abrir un/una:

238 East 9th Street NY 10003
Address

Seeking a license to serve: **BEER/WINE & LIQUOR**
En búsqueda de una licencia para servir:

Public meeting for comments: **Wednesday, February 16, 2022 at 6:30pm**
Reunion publica para comentarios

Online: <https://zoom.us/j/92199317942>
see www.cb3manhattan.org for zoom meeting details

ALCOMMUNITY BOARD 3
SLA & DCA Licensing
Committee Meeting
En la JUNTA COMUNITARIA 3
La reunion del comité
de Licencias del SLA y del DCA

ma03@cb.nyc.gov - www.cb3manhattan.org

ATTENTION RESIDENTS & NEIGHBORS

THE CLOISTER EAST 1st / FLOWER CAFE 646-773-1107
Company Name / Contact Info

Plans to open a () **RESTAURANT CAFE BAR**

RESTAURANT CAFE BAR SIDE BY SIDE RESTAURANT
at the following location
238 East 9th Street NY 10003

seeking a license to serve () **BEER/WINE & LIQUOR**

BEER/WINE & LIQUOR
Public meeting for comments
Wednesday, February 16, 2022 at 6:30pm
Online: <https://zoom.us/j/92199317942>
see www.cb3manhattan.org for zoom meeting details

ma03@cb.nyc.gov - www.cb3manhattan.org

DAILY NEWS
NEW YORK'S HOMETOWN NEWSPAPER



**Adams pushing for 9/11-type of effort
Gov appoints task force vs. weapons
Biden to visit city, offer help**
MINNER STRIKE LEADER ATTACKED

**ATTENTION RESIDENTS
& NEIGHBORS**

THE CLOISTER EAST 1st / FLOWER CAFE 646-773-1107
Company Name / Contact Info

Plans to open a

RESTAURANT CAFE BAR SIDE BY SIDE RESTAURANT

at the following location

238 East 9th Street NY 10003

This establishment is seeking a license to serve

BEER/WINE & LIQUOR

There will be an opportunity for public comment on

Wednesday, February 16, 2022 at 6:30pm

Online: <https://zoom.us/j/92199317942>

see www.cb3manhattan.org for zoom meeting details

ma03@cb.nyc.gov - www.cb3manhattan.org

ATTENTION RESIDENTS & NEIGHBORS

THE CLOISTER EAST INC / CLOISTER CAFE 646-773-1107
Company/DBA Name and Contact Number for Questions

Plans to open a

RESTAURANT-CAFE-BAR SIDE-BACKYARD ROADWAY CAFE
(Please choose) Bar/Restaurant/Club and indicate if there will be a Sidewalk Café or Backyard Garden

at the following location

238 EAST 9TH STREET NY 10003
Building Number and Street Name (Address)

This establishment is seeking a license to serve

BEER / WINE & LIQUOR.
Beer & Wine or Beer/Wine & Liquor

There will be an opportunity for public comment on

Wednesday, February 16, 2022 at 6:30pm
Online: <https://zoom.us/j/92199317942>
see www.cb3manhattan.org for zoom meeting details

Date/Time/Location

NICHOLAS DROBENKO 646 773-1107
Applicant Contact Information

At COMMUNITY BOARD 3
SLA & DCA Licensing Committee Meeting
mn03@cb.nyc.gov - www.cb3manhattan.org

ATTENTION RESIDENTS & NEIGHBORS

第 3 社區居民 請注意

THE CLOISTER EAST INC / CLOISTER CAFE 646 773-1107
公司名字(Company) and/和 聯繫人的資料 (Contact Info)

Plans to open a (以上的店主想要在第 3 社區申請生意相關牌照擴展生意)

BESTAURANT-CAFE-BAR SIDE-BACKYARD, ROADWAY CAFE
(請選擇/please choose)

酒吧(Bar)/餐館 (Restaurant)
戶外咖啡 (Sidewalk Café) or 或者
後院花園咖啡(Backyard Use)

238 EAST 9TH STREET NY 10003

Address/生意地址

seeking a license to serve(以上的店主想要請以下相關酒牌照)

BEER/WINE & LIQUOR
(請選擇/please choose)

啤酒和酒牌照(Beer & Wine) or/或者
啤酒牌照 (Beer) or/或者
酒和烈酒牌照 (Wine & Liquor)

Public meeting for comments

第 3 社區的居民有權利提出自己的意見和建議.

(CB3 SLA & DCA Committee Meeting)

曼哈頓第 3 社區委員會

酒牌和紐約市消費局有關小商業牌照委員會

Wednesday, February 16, 2022 at 6:30pm

Online: <https://zoom.us/j/92199317942>

see www.cb3manhattan.org for zoom meeting details

時間 (Time) 和地點 (Location)

mn03@cb.nyc.gov - www.cb3manhattan.org

NEIGHBORING RESIDENTS VECINOS DE LA COMUNIDAD

THE CLOISTER EAST INC / CLOISTER CAFE 646-773-1107
Company Name/ Contact Info Nombre de la Compañía/el teléfono de contacto

Plans to open a:

Planifique abrir un/una:

RESTAURANT-CAFE-BAR
(Please choose) Bar/Restaurant
sidewalk café/backyard use

SIDE-BACKYARD ROADWAY CAFE
(Favor de escoger) una Barra/un Restaurante
un café de acera o un patio de atrás

238 EAST 9TH STREET N / 10003
address dirección

Seeking a license to serve

**En búsqueda de una
licencia para servir:**

BEER / WINE & LIQUOR
Beer & Wine or Beer/Wine & Liquor Cerveza y vino o cerveza/vino y bebidas alcohólicas

**Public meeting
for comments**

**Reunión público
para comentarios**

Wednesday, February 16, 2022 at 6:30pm

Online: <https://zoom.us/j/92199317942>

see www.cb3manhattan.org for zoom meeting details

At COMMUNITY BOARD 3
SLA & DCA Licensing
Committee Meeting

En la JUNTA COMUNITARIA 3
La reunión del Comité
de Licencias del SLA y del DCA

mn03@cb.nyc.gov - www.cb3manhattan.org

EXHIBIT "D"



NYS Liquor Authority Mapping Project (LAMP)

version: 1.0.1

Search By Proximity

Search for an address or locate on map

238 E 9th St, New York, NY, 11 X



Show results within (Feet)

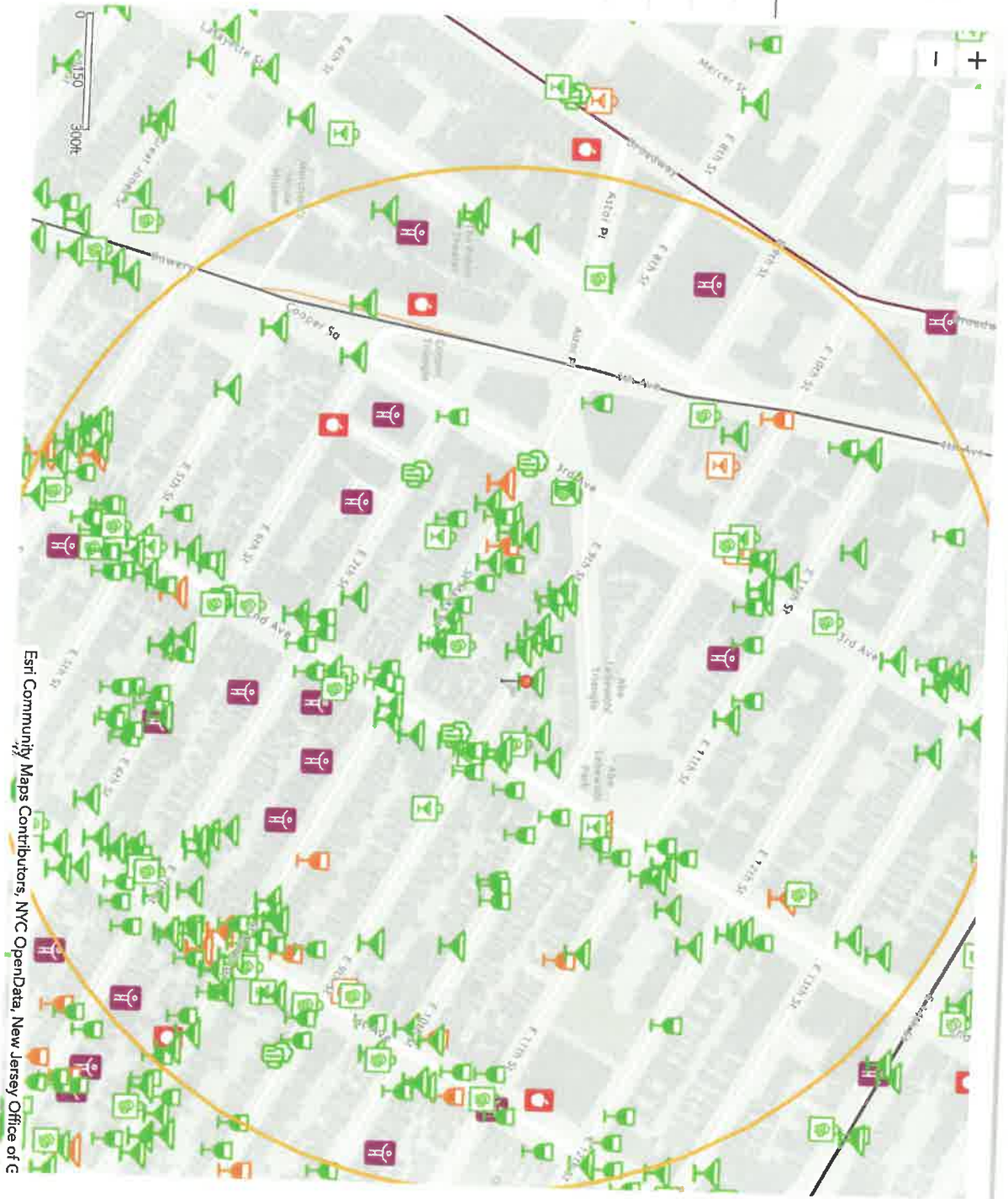


Active Licenses	(235)
Pending Licenses	(19)
Inactive Licenses	(129)
Places of Worship	(15)
Public/Private Schools	(5)

Search by Ser#, Name, City, Zip, ...

Tasks Results

- Search Active Licenses
- Search Pending Licenses
- Search Inactive Licenses



Esri Community Maps Contributors, NYC OpenData, New Jersey Office of C

This report is for informational purposes only in aid of identifying establishments potentially subject to 500 and 200 foot rules. Distances are approximated using industry standard GIS techniques and do not reflect actual distances between points of entry. The NYS Liquor Authority makes no representation as to the accuracy of the information and disclaims any liability for errors.

Proximity Report For:	238 E 9th St, New York, New York, 10003
Location	Latitude: 40.72935
Geocode	Longitude: -73.98786
Report Generated On	1/31/2022

8 Closest Liquor Stores		
Name	Address	Distance
SAKAYA INC Ser #: 1189050	324 E 9TH STREET (WEST STORE) 1ST & 2ND AVE. NEW YORK, NY 10003	373 ft
MRN LIQUOR INC Ser #: 1284586	16 SAINT MARKS PL NEW YORK, NY 10003	394 ft
MIAI LIQUORS INC Ser #: 1023526	166 2ND AVE NEW YORK, NY 10003	446 ft
TASTE WINE LLC Ser #: 1282743	50 3RD AVE NEW YORK, NY 10003	715 ft
S & P LIQUOR & WINE CORP Ser #: 1281498	89 2ND AVE NORTH STORE NEW YORK, NY 10003	945 ft
EAST VILLAGE WINES & SPIRITS INC Ser #: 1302369	138 1ST AVE NEW YORK, NY 10009	986 ft
ASTOR WINES & SPIRITS INC Ser #: 1023515	399 LAFAYETTE STREET NEW YORK, NY 10003	1,443 ft
735 BROADWAY WINES INC Ser #: 1284995	735 BROADWAY NEW YORK, NY 10003	1,512 ft

Schools within 500 feet	
Name	Address
No Schools within 500 feet	Distance

Churches within 500 feet	
Name	Distance
Middle Church Office	469 ft

Pending On Premises Liquor Licenses within 750 feet	
Name	Address
DINAH CORPORATION Ser #: 1340316	162 166 2ND AVE NEW YORK, NY 10003
PEGASUS PIZZA LLC Ser #: 1336138	2 ST MARKS PL UNIT 3 NEW YORK, NY 10003

Distance	
Name	Distance
DINAH CORPORATION	448 ft
PEGASUS PIZZA LLC	498 ft

Active On Premises Liquor Licenses within 750 Feet

Name	Address	Distance
ROBATAVA NY LLC Ser #: 1311089	231 E 9TH ST NEW YORK, NY 10003	77 ft
TOKYO MAMA INC Ser #: 1308766	230 E 9TH ST NEW YORK, NY 10003	85 ft
TOKYO MAMA INC Ser #: 1024390	240 E 9TH STREET NEW YORK, NY 10003	122 ft
9TH STREET VENTURE LTD Ser #: 1024461	232 E 9TH STREET NEW YORK, NY 10003	161 ft
MS9 RESTAURANTS LLC Ser #: 1278473	151 2ND AVE NEW YORK, NY 10003	170 ft
M & Y CATERING INC Ser #: 1308912	31 SAINT MARKS PL WEST GROUND STORE NEW YORK, NY 10003	178 ft
149 SECOND AVE REST INC Ser #: 1237783	149 2ND AVENUE NEW YORK, NY 10003	179 ft
29 ST MARKS PLACE REST INC Ser #: 1024431	29 ST MARKS PLACE NEW YORK, NY 10003	196 ft
J & K RES ENTERPRISES INC Ser #: 1149917	140 142 2ND AVENUE MAIN FLOOR NEW YORK, NY 10003	197 ft
HONEY RYDER LLC Ser #: 1262045	147 149 2ND AVE NEW YORK, NY 10003	197 ft
HINOMARU INC Ser #: 1145016	25 ST MARKS PLACE 2ND & 3RD AVENUES NEW YORK, NY 10003	207 ft
E OCHI INC Ser #: 1121866	218 E 9TH ST NEW YORK, NY 10003	229 ft
TEMAKASE NYC LLC Ser #: 1333140	157 2ND AVE NEW YORK, NY 10003	241 ft
TSAMPA INC Ser #: 1024414	212 E 9TH ST NEW YORK, NY 10003	260 ft
UKI FREEDOM LLC Ser #: 1313706	136 2ND AVE NEW YORK, NY 10003	265 ft
HASAKI RESTAURANT INC Ser #: 1024242	210 E 9TH STREET NEW YORK, NY 10003	275 ft
TWO AND EIGHT GOURMET LTD Ser #: 1024394	132 2ND AVENUE NEW YORK, NY 10003	286 ft
MI NE FOODS GROUP INC Ser #: 1324666	15 ST MARKS PL NEW YORK, NY 10003	300 ft
39 ST MARKS INC Ser #: 1189562	41 ST MARKS PLACE 2ND AVENUE & 1ST AVENUE NEW YORK, NY 10003	302 ft
AUANTHAI INC Ser #: 1277047	7 ST MARKS PLACE EAST & WEST STORES NEW YORK, NY 10003	365 ft
HOURGLASS HOLDINGS INC Ser #: 1298006	9 ST MARKS PL EAST SIDE NEW YORK, NY 10003	375 ft
TAISHO INC Ser #: 1141078	9 ST MARKS PLACE 2ND & 3RD AVENUES NEW YORK, NY 10003	412 ft
CLINTON CRAFT LLC Ser #: 1321215	41 43 E 7TH ST BASEMENT, LOWER LEVEL NEW YORK, NY 10003	427 ft
BARCADE DOWNTOWN LLC Ser #: 1316575	6 SAINT MARKS PL NEW YORK, NY 10003	450 ft
N Y RESTAURANT SUPPLIES INC Ser #: 1232110	29 3RD AVE 2ND FL 3RD AVENUE & EAST 9TH STREET NEW YORK, NY 10003	518 ft

Active On Premises Liquor Licenses within 750 feet

Name	Address	Distance
949 GRAND BAR LLC Ser #: 1336060	155 2ND AVE NEW YORK, NY 10003	
FT 245 CORP Ser #: 1144031	245 EAST 11TH STREET AKA 175 S NEW YORK, NY 10003	544 ft
JUDEX ENTERPRISES INC Ser #: 1024266	178 2ND AVENUE NEW YORK, NY 10003	582 ft
LA MERIDIANA I LTD Ser #: 1288443	176 2ND AVE NEW YORK, NY 10003	629 ft
TKM 228 EAST 10TH ST LLC Ser #: 1328187	228 E 10TH ST NEW YORK, NY 10003	642 ft
82ND STREET CAFE INC Ser #: 1205934	1453 57 3RD AVE 82ND & 83RD NEW YORK, NY 10028	685 ft
3RD AVENUE HOSPITALTY LLC Ser #: 1193028	55 3RD AVE NEW YORK, NY 10003	686 ft
ELYS CAFE LLC Ser #: 1337190	58 3RD AVE NEW YORK, NY 10003	691 ft
PERUCCO INC Ser #: 1279139	182 2ND AVE NEW YORK, NY 10003	721 ft
A VENIERO INC Ser #: 1122289	342 EAST 11TH STREET NEW YORK, NY 10003	723 ft
IMMIGRANT TAP ROOM INC Ser #: 1306247	341 E 9TH ST WEST STORE NEW YORK, NY 10003	724 ft
IMMIGRANT WINE BAR LLC, THE Ser #: 1298429	341 E 9TH ST NEW YORK, NY 10003	742 ft
		742 ft



NYS Liquor Authority Mapping Project (LAMP)

version: 1.0.1

Search By Proximity

Search for an address or locate on map

238 E 9th St, New York, NY, 11 X

Show results within (Feet)

500

0 1500

Active Licenses (56)

ROBATAYA NY LLC | Active 77.24 ft

TOKYO MAMA INC | Active 85.5 ft

TOKYO MAMA INC | Active 122.07 ft

PRAMUKH 31 INC | Active 136.26 ft

Search by Ser#, Name, City, Zip, ...

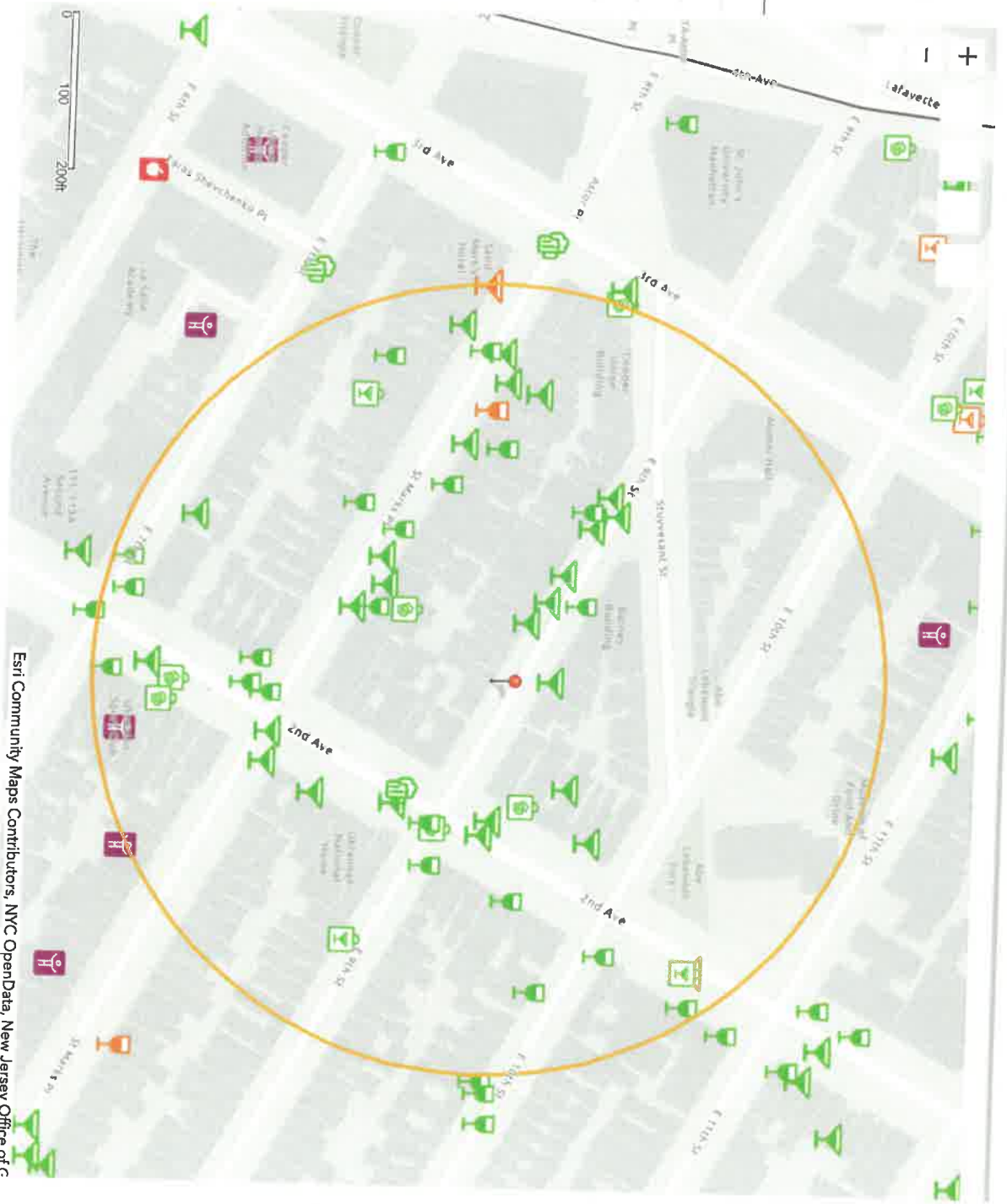
Tasks

Search Active Licenses

Search Pending Licenses

Search Inactive Licenses

Results



Esri Community Maps Contributors, NYC OpenData, New Jersey Office of C

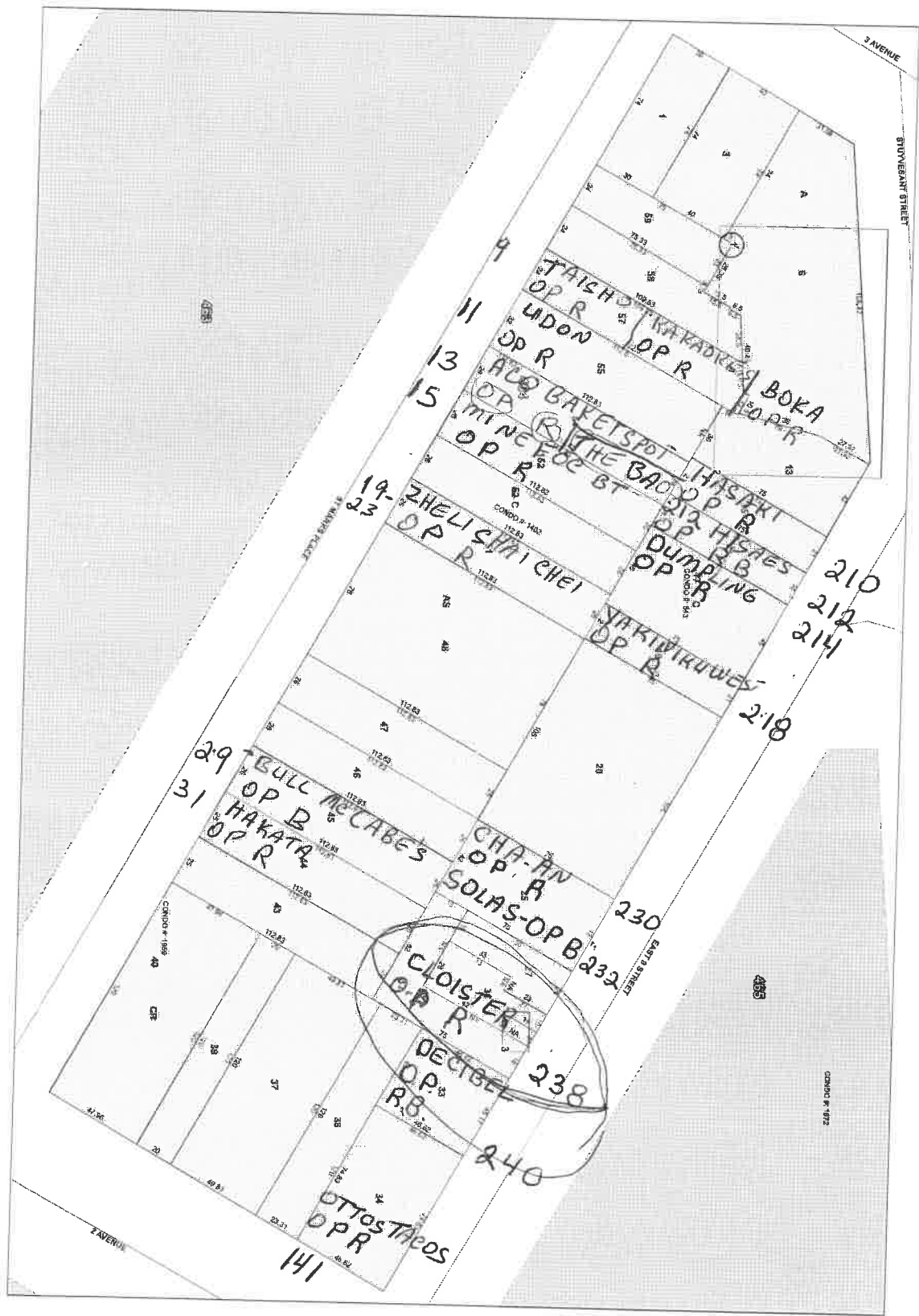
EXHIBIT "E"



NYC Digital Tax Map
 Effective Date : 10-25-2021 12:58:53
 End Date : Current
 Manhattan Block: 454



- Legend
- Streets
 - Miscellaneous Text
 - Parcel on Hooks
 - Boundary Lines
 - Lot Area Possession Hooks
 - Regular
 - Underwater
 - Not Lot Polygon
 - Color Number
 - Tax Block Polygon



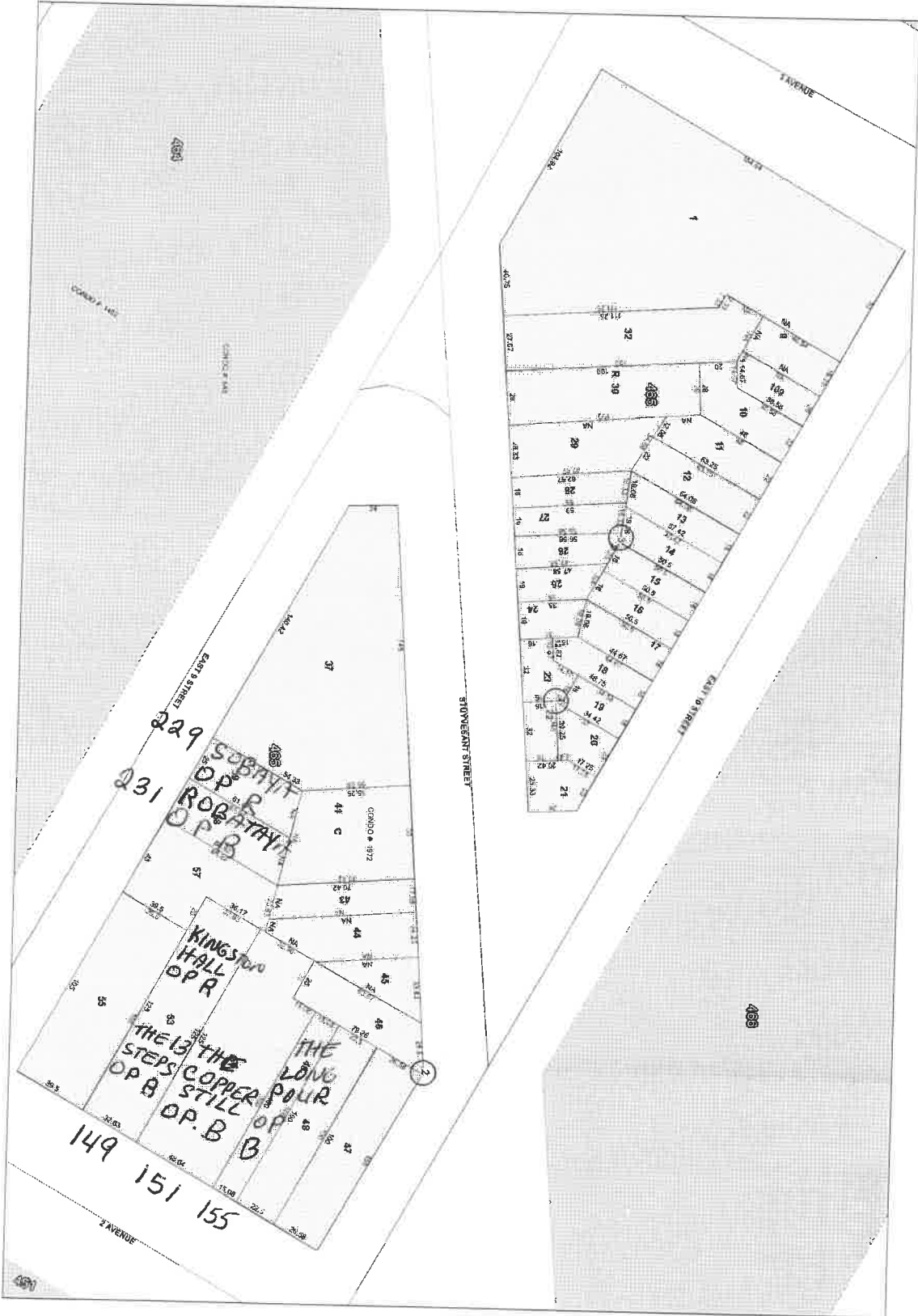
0.78 1.57 3.14 4.71 6.28 7.85 9.42 11.00 feet



NYC Digital Tax Map
 Effective Date : 03-11-2021 10:16:01
 Expire Date : Current
 Manhattan Block: 405



- Legend**
- 1 Modified 1st and 2nd Possession Block
 - 1 Lot 1st Possession Block
 - 1 1st Possession Block
 - 1 2nd Possession Block
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 - 1 100th Possession Block



0 5 10 20 30 40 Feet



NYC Digital Tax Map
Effective Date : 02-01-2009 15:35:44
End Date : Current
Manhattan Block: 451

- Legend
- 1 Street
 - 1 Maintenance Tax
 - 1 Parcel Number
 - 1 Boundary Line
 - 1 Lot Face Possession Hecks
 - 1 Register
 - Underpinning
 - 1 Tax Lot Polygon
 - 1 Condo Number
 - 1 Tax Block Polygon

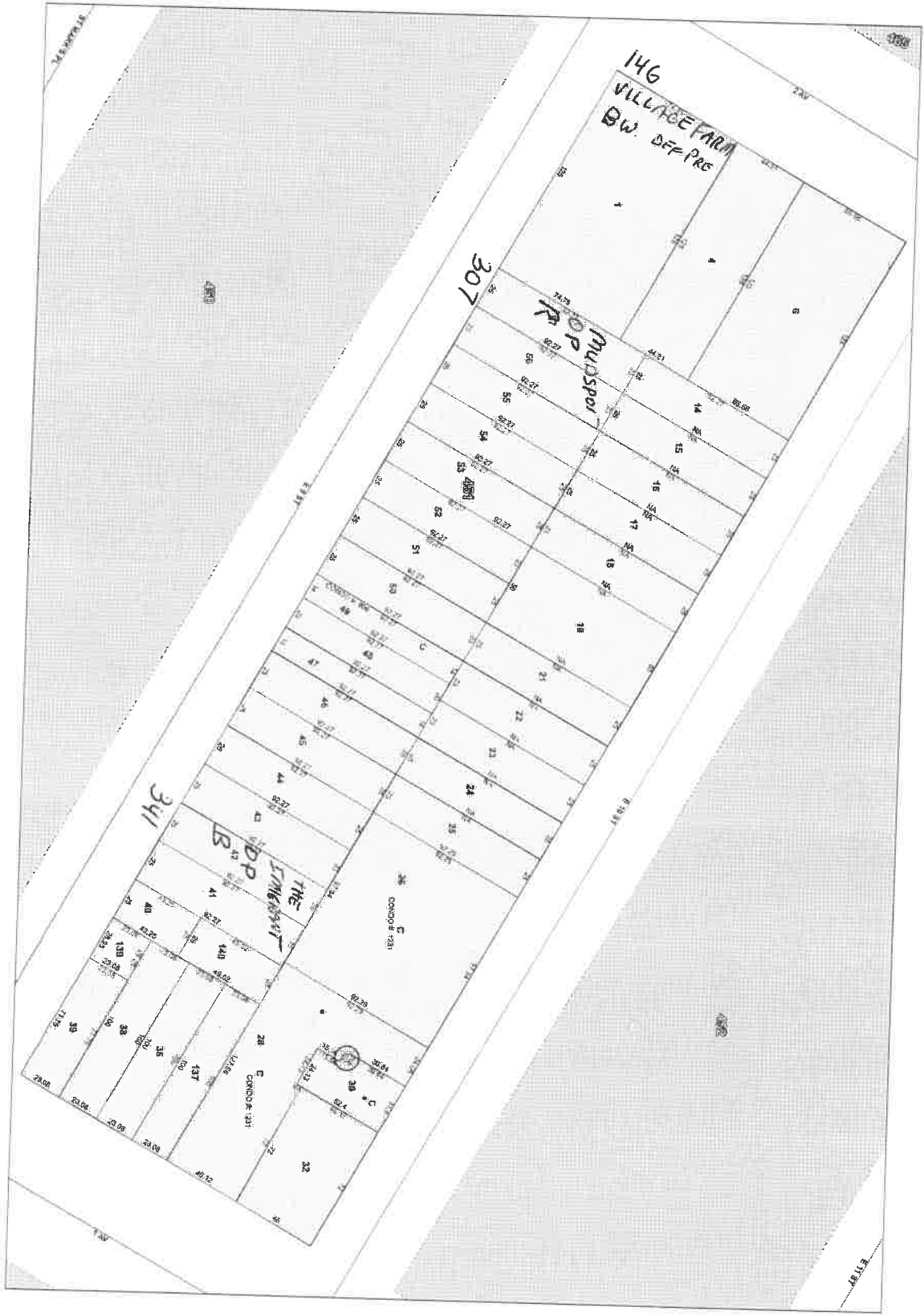


EXHIBIT "F"

APPERTIVOS

GUACAMOLE BORRACHO avocado grilled tequila infused pineapple cilantro jalapeño	10
AVOCADO TOSTADA crispy mini blue tortillas (3) avocado cotija cheese epazote pico de gallo	9
HONEY BRUSSELS roasted brussels sprouts honey-butter toasted walnuts	12
CALAMARI crisp calamari coconut-malaguetta glaze toasted crushed cashews	14
QUESO FLAMEADO melted oaxaca cotija pepitas queso fresco chihuahua pico de gallo poblano	12

TACOS 12 each

2 corn tortillas with roasted guajillo-ancho sauce and roasted tomatillo sauce
PICANHA / STEAK grilled rib-eye crisp oaxaca cheese grilled onion cilantro
POLLO / CHICKEN grilled chicken onions cotija cheese cilantro
PESCADO / FISH miso-cod cabbage seaweed chipotle aioli
AMAZON vegan plant based 'meat' grilled onion corn rajas pico de gallo mushroom
CARNITAS / PORK slow roasted pulled pork caramelized onions pico de gallo cilantro

CEVICHE

MELANCIA watermelon avocado pickled onions mint guajillo chipotle lime juice	13
CAMARAO shrimp roasted serrano sauce lime juice cilantro	16

POSTRES 10 each

CHURROS with dulce de leche caramel
FLAN

SALADAS 17 each

LEBLON kale papaya strawberries avocado mint tomato walnut lime vinaigrette
COPACABANA arugula grapefruit carrots hearts of palm avocado pepitas grapefruit-sherry vinaigrette
IPANEMA quinoa cranberry mango cucumber queso fresco corn rajas basil mustard-agave vinaigrette

GRELHADOS

3 skewers served with grilled bell pepper and onion with choice of house-cut yuca or french fries	
POLLO / CHICKEN	22
CAMARAO / SHRIMP	26
PICANHA / STEAK	30

ENTRADAS

ENCHILADAS VERDES marinated & blackened chicken roasted tomatillo sauce monterrey jack cheese cilantro queso fresco sour cream red onion corn tortillas (4)	26
STEAK FAJITAS prime hanger steak bell pepper red onion jalapeño garlic tequila lime juice corn tortillas (4)	26
CASHEW CRUSTED SALMON salmon filet toasted crushed cashews garlic caramelized onions coconut spinach red pepper flakes arroz a grega (cashew-vegetable-raisin rice)	34
CARNE ASADA grilled & sliced 18 oz prime hanger steak spring onions cactus refried beans queso fresco chunky tomatillo- guacamole	42

SIDES

PAO DE QUIEJO brazilian cheese bread	6
PASTEL EMPANADAS spinach onion corn heart of palm	9
GRILLED STRING BEANS	9
ROASTED MEXICAN CORN cotija cheese epazote touch of lime	9
ROASTED BRUSSELS SPROUTS	9

HOOKAH

each 40

purchase of one menu beverage
required per person

banana	grape	peach
blue mist	guava	black cherry
blueberry	honey	peppermint
black cherry	lemon	pineapple
chochomint	mango	raspberry
cuban mojito	melon mix	rose
dragon's breath	mint	strawberry
espresso	orange	tangerine peel
double apple	passion fruit	vanilla
		watermelon

POPULAR COMBINATIONS

peach + mango | watermelon + mint
orange + rose | pineapple + dragon's breath

WATER BASE ADDITIONS

fruit juice or beer or milk 8

PINEAPPLE HEAD 10

CERVESAS

BOTTLED 7

DRAFT 8

WINE

ROSE glass | bottle

ame du vin, cotes de provence, france, 2019 14 56

bertaud belieu, cotes de provence, 2018 16 64

WHITE

raeburn, chardonnay, russian river valley, 2019 15 60

RED

bonanza, cabernet sauvignon, california 16 64

saldo, zinfandel, napa valley, 2019 19 76

belle glos, pinot noir, california, 2018 126

BEBIDAS

each 20

FLOR DEL DIABLO

casamigos tequila | fresh watermelon | lime
elderflower | jalapeño | chipotle-lime spiced rim

DAMA VERDE

casamigos mezcal | cointreau | cilantro | avocado
lime

LAVANDA

empress gin | fresh lemonade | lavender-infusion
cucumber

PERA ROSA

casamigos mezcal | cactus pear | thyme | lime

CAIPIRINHA

leblon cachaca | brown sugar | lime | butterfly pea
flower extract

CAVALHEIRO

leblon reserva especial | grand marnier | dark
cherry | orange bitters

PALOMA ESPUMOSA

champagne | rose | white grapefruit

HORCHATA (frozen)

rice water | vanilla | cinnamon | coconut | rum
leblon reserva especial

NON ALCHOHOLIC

WATER (still, sparkling) 6 / 12

SODA (coke, sprite, tonic, ginger ale) 4

COLD JUICES (orange, cranberry, pineapple) 4

COFFEE 4

CAPPUCCINO (small / large) 4 / 6

ESPRESSO (single / double) 4 / 5

TEA 5

CHAMPAGNE

glass | bottle

sparkling wine 18

ruinart blanc de blanc 55 350

dom perignon 400

ruinart rose 85 450

dom perignon rose 850

tag us @cloistercafe

All menu items are subject to change. No substitutions. Please alert your server of any food allergies, as not all ingredients utilized are listed on the menu. Eating raw or undercooked fish, shellfish, eggs, or meat increases the risk of food-borne illnesses

BRUNCH/LUNCH

*choice of house cut french fries
or roasted rosemary potatoes*

OVOS TOSTADAS* crispy organic blue tortilla avocado salad fried eggs cotija cheese epazote	18
ACAI BOWL acai mixed berries banana coconut chia seeds granola coconut flakes pumpkin seeds	16
GRANJERO OMELET* goat cheese spinach green peppers red peppers	16
PICOSO OMELET* jalapeño queso blanco tomato avocado hearts of palm	16
FRENCH TOAST grand marnier-infused challah bread toasted coconut flakes powdered sugar maple syrup	16
HUEVOS RANCHEROS* fried eggs ranchero sauce refried beans pico de gallo	18
MISTO QUENTE* brazilian crunchy toast roasted ham + cheese sandwich	14
AMAZON BURGER* 100% gmo-free, gluten-free, soy-free plant based 'meat' baby arugula plum tomato caramelized onions	19
JANEIRO BURGER* brioche bun wagyu beef baby arugula caramelized onions plum tomato fried jalapeno sun dried tomato aioli monterey jack cheese	24
BISTEC & OVOS* grilled rib-eye steak chimichurri eggs any style	26
EGGS BENEDICT* english muffin thick cut bacon hollandaise sauce	18
VEGAN BREAKFAST BURRITO* 100% gmo-free, soy-free, plant based 'meat' rice corn black beans peppers guacamole pico de gallo jalapeno flour tortilla	18

SALADAS

17 each

LEBLON kale papaya strawberries avocado mint tomato walnut lime vinaigrette
COPACABANA arugula grapefruit carrots hearts of palm avocado pepitas grapefruit-sherry vinaigrette
IPANEMA quinoa cranberry mango cucumber queso fresco corn rajas basil mustard-agave vinaigrette

TACOS

12 each

two (2) grilled corn tortilla tacos per order
PICANHA / STEAK grilled rib-eye crisp oaxaca cheese grilled onion cilantro roasted guajillo-ancho sauce
POLLO / CHICKEN grilled marinated chicken onions cotija cheese cilantro roasted tomatillo sauce
PESCADO / FISH miso-cod cabbage seaweed chipotle aioli
AMAZON vegan plant based 'meat' grilled onion corn pico de gallo mushroom tomatillo sauce
CARNITAS / PORK slow roasted pork caramelized onions cilantro pico de gallo roasted guajillo-ancho sauce

APPERTIVOS

GUACAMOLE BORRACHO avocado grilled tequila infused pineapple cilantro white onion plum tomato jalapeño	10
AVOCADO TOSTADA crispy mini blue tortillas (3) avocado epazote cotija cheese pico de gallo	9
HONEY BRUSSELS roasted brussels sprouts honey-butter toasted crushed walnuts	12
CALAMARI crisp calamari coconut-malaguetta glaze toasted crushed cashews	14
QUESO FLAMEADO melted oaxaca cotija pepitas queso fresco chihuahua pico de gallo pobiano	12

CEVICHE

MELANCIA watermelon avocado pickled onions mint guajillo chipotle lime	13
CAMARAO shrimp roasted serrano sauce lime juice cilantro grape tomato	16

SIDES

9 each

ROASTED MEXICAN CORN
THICK CUT BACON
MIXED FRUIT

HOOKAH

each 40

purchase of one menu beverage
required per person

banana	grape	peach
blue mist	guava	black cherry
blueberry	honey	peppermint
black cherry	lemon	pineapple
chochomint	mango	raspberry
cuban mojito	melon mix	rose
dragon's breath	mint	strawberry
espresso	orange	tangerine peel
double apple	passion fruit	vanilla
		watermelon

POPULAR COMBINATIONS

peach + mango | watermelon + mint
orange + rose | pineapple + dragon's breath

WATER BASE ADDITIONS
fruit juice or beer or milk

8

PINEAPPLE HEAD

10

CERVESAS

BOTTLED

7

DRAFT

8

WINE

ROSE

glass | bottle

ame du vin, cotes de provence, france, 2018 14 56

bertaud belieu, cotes de provence, 2018 16 64

WHITE

raeburn, chardonnay, russian river valley, 2019 15 60

RED

bonanza, cabernet sauvignon, california 16 64

saldo, zinfandel, napa valley, 2019 19 76

belle glos, pinot noir, california, 2018 126

BEBIDAS

FLOR DEL DIABLO 18
casamigos tequila | fresh watermelon | lime
elderflower | jalapeño | chipotle-lime spiced rim

DAMA VERDE 18
casamigos mezcal | cointreau | cilantro | avocado
lime

LAVANDA 18
empress gin | fresh lemonade | lavender-infusion
cucumber

PERA ROSA 18
casamigos mezcal | cactus pear | thyme | lime

CAIPIRINHA 18
leblon cachaca | brown sugar | lime | butterfly pea
flower extract

CAVALHEIRO 18
leblon reserva especial | grand marnier | dark
cherry | orange bitters

PALOMA ESPUMOSA 18
champagne | rose | white grapefruit

HORCHATA (frozen) 18
rice water | vanilla | cinnamon | coconut | rum
leblon reserva especial

BELLINI / MIMOSA / BLOODY MARY 14

NON ALCOHOLIC

WATER (still, sparkling) 6 / 12

SODA (coke, sprite, tonic, ginger ale) 4

COLD JUICES (orange, cranberry, pineapple) 4

COFFEE 4

CAPPUCCINO (small / large) 4 / 6

ESPRESSO (single / double) 4 / 5

TEA 5

CHAMPAGNE

glass | bottle

sparkling wine 18

ruinart blanc de blanc 55 350

dom perignon 400

ruinart rose 85 450

dom perignon rose 850

tag us @cloistercafe

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EXHIBIT "G"

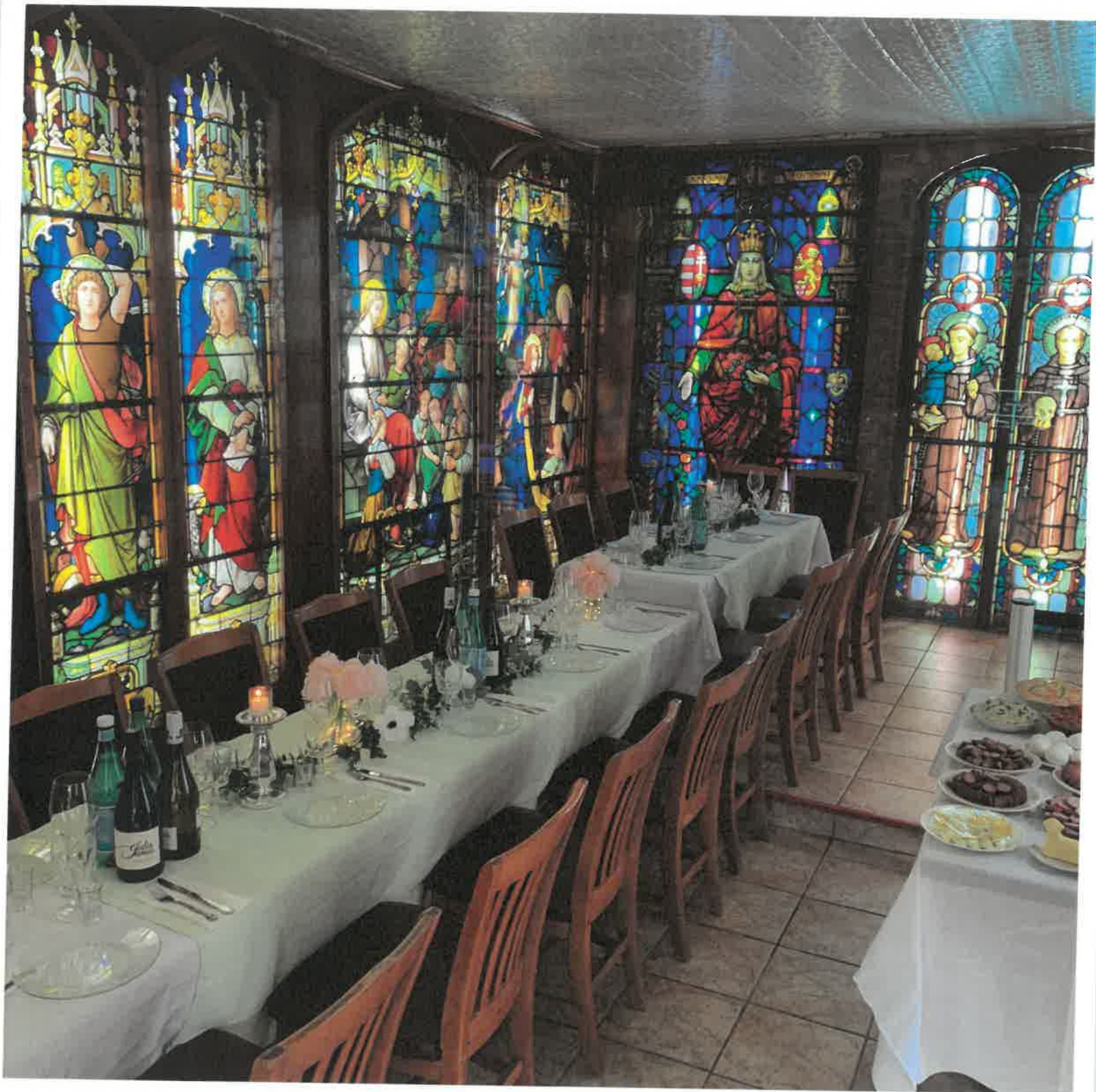








EXHIBIT "H"



The City of New York
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

THE CLOISTER EAST INC.

238 E 9TH ST
NEW YORK, NY 10003-7503

PERMIT/LICENSE TYPE:

NON-TOBACCO HOOKAH ESTABLISHMENT LICENSE

RECORD NUMBER: 50085323 CODE: H89 CLASS/SUBCLASS: HKFS

ISSUE DATE: 01/15/2020

EXPIRATION DATE: 01/31/2021

PERMITTEE/LICENSEE NAME: THE CLOISTER EAST INC.

ADDRESS OF PERMITTED ENTITY/LICENSED INDIVIDUAL:

238 E 9TH ST
NEW YORK, NY 10003-7503

This permit/license is issued to the individual person or other entity named above to conduct a business or other activity regulated by this Department. It is granted in accordance with provisions of the New York City Health Code or other law regulating this activity. This permit/license is not transferable to any other individual or entity or for use at any other premises and is subject to suspension or revocation for failing to comply with the Health Code or other applicable law.

OXIRIS BARBOT, MD
COMMISSIONER OF HEALTH AND MENTAL HYGIENE

POST CONSPICUOUSLY

COMPLAINTS MAY BE MADE BY PHONE TO 311 OR ONLINE AT NYC.GOV/311

From: drobenkoa@gmail.com,
To: wdrobenko@cs.com,
Subject: Fwd: Open Restaurant Form Confirmation
Date: Mon, Jan 31, 2022 11:32 am

----- Forwarded message -----

From: mykolad238@aol.com <mykolad238@aol.com>
Date: Mon, Apr 19, 2021 at 8:49 PM
Subject: Fwd: Open Restaurant Form Confirmation
To: drobenkoa@gmail.com <drobenkoa@gmail.com>

-----Original Message-----

From: NYCDOT NOTICE <nycdotnotice@dot.nyc.gov>
To: mykolad238@aol.com <mykolad238@aol.com>
Sent: Wed, Jul 1, 2020 4:41 pm
Subject: Open Restaurant Form Confirmation

Congratulations! As part of the City's Open Restaurants program, The Cloister East Inc , is authorized to add outdoor seating to the City's sidewalk and/or roadway in front of its restaurant in accordance with all applicable terms and conditions and health guidance.

Business name: The Cloister East Inc
Business phone: 2127779128
Establishment Address: 238 East 9th Street, Manhattan, NY

Approved for:

Sidewalk Seating: yes

Roadway Seating: yes

Alcohol Service: yes

You will receive additional emails with materials needed for safe and successful participation in the Open Restaurants program.

For questions about the program, requirements and resources please visit the [NYCDOT Open Restaurant Program Website](#)

Thank you,

NYC Department of Transportation

EXHIBIT "I"

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEW YORK STATE LIQUOR AUTHORITY
HEARING BUREAU
163 WEST 125TH STREET, 8TH FLOOR
NEW YORK, NEW YORK 10027

PH#: [212] 961-8337
FAX: [212] 961-8334

12/03/2020

FRANK W. PALILLO
COUNSELLOR AT LAW
SIXTY BROAD STREET, SUITE 3504
NEW YORK, NY 10004

DROBENKO, JAROSLAW
CLOISTER EAST INC, THE
CLOISTER CAFE
238 E 9TH STREET
NEW YORK, NY 10003

RE: 1024379, NEW YORK OP 4684
CLOISTER EAST INC, THE
DO#1125-2020/Case # 146525

Dear Sir/Madam:

Pursuant to your request, enclosed are the findings and recommended decision of the Administrative Law Judge in the above reference matter.

Within twenty (20) days from the date of this letter, you may, if you so desire, controvert any of the findings contained in the Administrative Law Judge's report. Please direct your statement in controversion to the Hearing Bureau, c/o New York State Liquor Authority, 163 West 125th Street, 8th Floor, New York, NY 10027. If you have any questions regarding this matter you may contact the Hearing Bureau at [212] 961-8337.

Upon expiration of the twenty (20) days, the matter will be submitted to the Members of the Authority for a final determination.

PLEASE BE AWARE THAT THIS WILL BE YOUR ONLY OPPORTUNITY TO CONTROVERT OR OTHERWISE COMMENT ON THE FINDINGS OF THE ADMINISTRATIVE LAW JUDGE. WHEN THIS MATTER IS PRESENTED TO THE MEMBERS OF THE STATE LIQUOR AUTHORITY, THE MATTER WILL BE PRESENTED WITHOUT ORAL ARGUMENT.

STATE LIQUOR AUTHORITY
HEARING BUREAU

NEW YORK STATE LIQUOR AUTHORITY
Hearing Bureau
163 West 125th Street
New York, New York 10027

-----X
IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

Serial Number: 1024379 New York OP 4684

Docket No(s): 1125-2020

Case No(s): 146525

Licensee: The Cloister East, Inc.
238 East 9th Street
New York, NY 10013

Licensed Premises: Cloister Cafe
238 East 9th Street
New York, NY 10013

Principal: Jaroslaw Drobenko
21-46 31st Avenue
Long Island City, NY 11106

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Hearing Officer: Nicholas DeCesare, Administrative Law Judge

Hearing Date(s): October 6, 2020; October 7, 2020; October 13, 2020;
October 29, 2020; November 13, 2020

Hearing Location: Hearing Bureau, 163 West 125th Street, NY, NY

Notice of Pleading(s): September 4, 2020

Attorney for Authority: Margarita Marsico, Esq.

Attorney for Licensee: Frank Palillo, Esq. Robert Garson, Esq.
299 Broadway, Suite 1890 Garson, Segal, Steinmetz,
New York, NY 10007 Floodgate, LLP
164 West 25 St., Ste. 11R
New York, NY 10001

Licensee's Representative: None

Licensee Pro Se: No

The Cloister East, Inc./Cloister Cafe
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Witness(es) for Authority: Charles Stravalle, Senior Investigator, Authority (Stravalle); Christopher Zitelli, local resident; Nancy Schreiber, local resident

Witness(es) for Licensee: Adrian Figueroa, Architect; Michael Petrillo, retired NYC police officer; Nicholas Drobenko, Principal; Tyler Garger, Patron of Licensee; Maria Sofia Katzman, Interior Designer engaged by Licensee

Licensee Present: Yes

Other Persons Present: Louis Dettor, Authority Administrative Law Judge, Observer; Linda Stark, Authority Administrative Law Judge, Observer

Authority's Exhibits:

- 1 - Notice of Pleading
- 2 - Stravalle Inspection Report
- 3 - Sheriff Inspection Report
- 4 - Place of Assembly Permit; Photographs of Exterior & Interior Enclosed Area Space
- 5 - 311 Reports
- 6 - Entity Information, NYS Department of State
- 6A - Certificate of Corporate Dissolution
- 7 - Court Case Information, NYS Department of Taxation & Finance
- 8 - License Renewal Application 2019
- 9 - License Renewal Application 2017
- 10 - Liquor License Application
- 11 - Stravalle Violation Checklist
- 12 - Stravalle Resume
- 13 - Executive Order 202.43
- 14 - Receipts
- 15 - Engel Letter & Warrant
- 16 - Bourassin Affidavit
- 17 - Uy Affidavit
- 18A - Diagram of Licensed Premises
- 18B - Diagram of Licensed Premises
- 19 - Notice Re: Licensee Attendance at Hearing
- 20 - DeRosa Affidavit
- 21 - Police Service Request for Licensed Premises
- 22 - License History
- 23 - Stravalle Video/Audio of Aug. 7, 2020 Inspection

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Licensee's Exhibits:

- A - Current Place of Assembly & Open Flame Permit
- B - Affidavit of Michael Petrillo
- C - Photograph, Rear Area, Half Wall
- D - Affidavit of Figueroa
- E - Criminal Court Disposition
- F - NYC Fire Dept. Rules: Hookah Use
- G - NYC Administrative Code 27-541, Exit Signs
- H - NYCFC Section 1028.5, Decorations
- I - NYCFC Section 3003.3, Pressure Relief Devices
- J - NYCFC Section 603.10
- K - NYCFC Section 1006.3 Illumination Emergency Power
- L - NYCBC Section 1008.2, Gates
- M - NYCFC Section 605.5, Extension Cords
- N - COVID-19 Cleaning & Disinfection Log Template
- O - Sheriff's Investigative Report
- P - State and Local Sales and Use Tax Return, 2020
- Q - State and Local Sales and Use Tax Return, 2019
- R - State and Local Sales and Use Tax Return, 2018
- S - Investigators Seated at Inside Table
- T - Dept. of Health Interior Guidance, Outdoor and Takeout/Delivery Food Services for COVID-19
- U - Authority COVID-19 Guidance, Outdoor Expansion
- V - NYC Open Restaurants Supplemental FAQ – COVID-19
- W - Dept. of Health Interior Guidance, Outdoor & Takeout/Delivery Food Services for COVID-19
- X - NYCFC Section 906, Portable Fire Extinguisher
- Y - Photograph, Fire Extinguisher Tag
- Z - Monthly Emergency Lighting Test Signoff Sheet
- AA - Fire Extinguisher Inspection Log
- BB - Rodriguez Fire Guard License
- CC - Photograph, Interior of Rear Area
- DD - Garber Photograph, Interior of Rear Area

Hearing Recorded: Digitally & Webex

The Cloister East, Inc./Cloister Cafe
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CHARGE(S)

Docket No. 1492-2019 / Case No. 133592

1. That, on or about August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations [Governor's Executive Order 202.43 regarding violations of social distancing and open container laws and associated posted NYSLA and NYDOH Guidance within 100 feet from the licensed premises]; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
2. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; FAILURE TO MAINTAIN ROLL DOWN GATE IN LOCKED OPEN POSITION WHEN BLDG OCCUPIED NYC BC 1008.2, all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
3. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; FAILURE TO MAINTAIN EMERGENCY LIGHTING NYC BC 1006.3 all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
4. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; HOOKAH COAS EXPOSED NOT IN STATIONARY VENTED AND DOB APPROVED FURNACE (NYC FC 310.7.3.3) all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
5. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; EXIT SIGN OBSTRUCTED BY BRANCHES (NYC AC 27-541) all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].

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6. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; FAILURE TO MAINTAIN FIRE EXTINGUISHER SERVICING TAGS, all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
7. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; CURTAIN PLACED OVER EXIT DOOR (NYC FC 1028.5) all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
8. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; NO OPEN FLAME PERMIT FOR CANDLES (NYC FC 105.6) all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
9. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; FAILURE TO MAINTAIN EMERGENCY LIGHTING, NYC BC 1006.3 all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
10. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; USING EXTENSION CORD FOR PERMANENT WIRING (NYC FC 605.5), all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
11. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; NO MONTHLY TESTING OF EMERGENCY LIGHTING (NYC FC 604.6), all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].

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12. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; NO EMERGENCY LIGHTING ACTIVATION RECORDS, all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
13. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; UNSECURED COMPRESSED GAS TANKS (NYS FC 3003.3.3), all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
14. That, on August 7, 2020, the licensee used the trade name "Café Tucano" in connection with the licensed business without the permission of the Authority first obtained; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(p) of the Rules of the State Liquor Authority [9 NYCRR 53.1(p)].
15. That, on and before August 7, 2020, in violation of Subdivisions 1 and 3 of Section 118 of the Alcoholic Beverage Control Law, there has existed a sustained and continuing pattern of noise, disturbance, misconduct or disorder on or about the licensed premises, related to the operation of the premises or the conduct of its patrons, which adversely affects the health, welfare or safety of the inhabitants of the area in which the licensed premises are located.
16. That, on August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes and/or fire, health, safety and governmental regulations; FAILURE TO MAINTAIN ROSTER OF SECURITY GUARDS, all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
17. That, on August 7, 2020, the licensee failed to conform with all representations set forth in the application, or approved amendments thereto, for the on-premises license under which such license was applied for and issued (NO LIVE ENTERTAINMENT); all cause for revocation, cancellation or suspension of the license in accordance with Rule 54.8 of the Rules of the State Liquor Authority [9 NYCRR 48.8].

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18. That, on or about August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], the licensee did not conform with all applicable building codes and/or fire, health, safety and governmental regulations, to wit: Governor's Executive Order 202.3 (as extended) and associated posted NYSLA and NYDOH Guidance regarding service inside the premises and/or takeout and delivery service; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
19. That, on or about August 7, 2020, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], the licensee did not conform with all applicable building codes and/or fire, health, safety and governmental regulations, to wit: Governor's Executive Order 202.3 (as extended) and associated posted NYSLA and NYDOH Guidance regarding outside service and social distancing; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority [9 NYCRR 53.1(f)].
20. That, on or before August 7, 2020, the licensed premises has ceased to operate as a bona fide premises within the contemplation of the license issued for such premises; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(d) of the Rules of the State Liquor Authority [9 NYCRR 53.1(d)].
21. That, on or before August 7, 2020, in violation of Subdivision 4 of Section 110 of the Alcoholic Beverage Control Law, the licensee failed to notify the State Liquor Authority of a change in facts, by filing of a supplemental statement duly verified, within ten (10) days of such change, concerning the dissolution of the licensee corporation.
22. That, in connection with the licensee's original/renewal application 2019-2021, the licensee submitted a false material statement or suppressed information concerning the dissolution of the licensee corporation; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(b) of the Rules of the State Liquor Authority [9 NYCRR 53.1(b)].
23. That, in connection with the licensee's original/renewal application 2017-2019, the licensee submitted a false material statement or suppressed information concerning the dissolution of the licensee corporation; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(b) of the Rules of the State Liquor Authority [9 NYCRR 53.1(b)].

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24. That, on or about August 7, 2020, in violation of 48.2 the Rules of the State Liquor Authority [9 NYCRR 48.2), the licensee, through the actions and/or inactions of its principal(s), and/or its agents and employees failed to exercise a high degree of supervision over the conduct of the licensed business.

BASED UPON the testimony and record in this case, the Administrative Law Judge makes the following findings of fact and opinion.

FINDINGS OF FACT

Case No. 146525

Charges 1, 18 and 19

The gravamen of the three (3) Charges listed above is alleged violations of Governor Cuomo's Executive Order 202.43 and associated Authority and New York Department of Health Guidance, as discussed below. As such, the Findings of Fact set forth below relate to all three (3) Charges.

Authority's Case

Authority witness Stravalle is a Senior Investigator for the Authority. He has been a per diem investigator for the Authority for ten (10) years. His work experience includes adjunct professor at various schools; Flotilla Commander-U.S. Coast Guard; Chief Security Officer-Director of Security, Fire, Life and Safety-Cumberland Packing Corp. for seven (7) years; Manager of Safety-National September 11 Memorial for two (2) years; Director of Security, Fire, Life Safety and Compliance-WNET for four (4) years; and Commanding Officer, Precinct Commander, Captain NYPD for twenty (20) years. He has also conducted numerous Authority compliance inspections.

Stravalle's education includes a B.S. in police science; an M.A. in criminal justice; and M.S in human resources; and numerous certifications and licenses in building construction; safety, health, fire and compliance standards; hazard recognition and assessment and others. (See **State Exhibit 12** for a detailed resume.)

In particular, he received training in COVID-19 safety and compliance issues, including compliance with state-promulgated Executive Orders and other regulatory requirements. He has participated in numerous COVID-19 compliance Inspections in conjunction with the Governor's Task Force and the NYPD Task Force.

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On the evening of August 6, 2020, Stravalle received a telephone call from the Sheriff's Office requesting that he participate in an inspection of the Licensed Premises with the New York City Police COVID-19 Task Force, in connection with repeated alleged violations of Executive Order 202.43 (Executive Order and other regulations at the Licensed Premises) (Inspection). (See **State Exhibits 2, 3 and 13**. See also **Licensee Exhibit 0**.) Stravalle was not told who reported the alleged violations.

Stravalle arrived at 12:30 A.M. on August 7, 2020 at the Licensed Premises to participate in the inspection. A diagram of the interior layout of the Licensed Premises is contained in **State Exhibits 18A and B**.

With respect to the charged violations of Governor Cuomo's Executive Order 202.43 and associated Authority and Department of Health Guidance (see also **Licensee Exhibits T, U, V and W**), Stravalle noted the following during his inspection:

1. **Lack of social distancing** In front of the Licensed Premises, at least ten (10) individuals—six (6) females and four (4) males—were observed congregating and waiting in line to enter with no social distancing—at least six (6) feet apart—and no markings on the ground to establish social distancing limitations.
2. **Patrons seated/standing inside** After entering the Licensed Premises and in a rear area with three (3) walls and a roof, at least eighteen (18) patrons were seated, two (2) males were standing, one (1) female standing: a total of twenty-one (21). Tables and chairs were not spaced six (6) feet apart, patrons were sitting side-by-side and back-to-back. This rear area had three (3) walls and a covering canapé, creating and constituting a roof-like covering. (See the photograph in **State Exhibit 4**.) This resulted in a conversion of an outside space into an interior space, as demonstrated by **State Exhibit 4**.
3. **Patrons kissing** Inside the Licensed Premises, two (2) females were kissing without masks. (See **State Exhibits 2 and 3**.)
4. **Patrons without masks** Video and audio taping showed the foregoing as well as some additional patrons inside the Licensed Premises not wearing masks. (See **State Exhibit 23** for video/audio of Stravalle's inspection.)

A criminal court summons for violating social distancing rules was issued and dismissed. (See **Licensee Exhibit E**.) Other summonses were issued and are pending. (See **State Exhibit 3**.) Stravalle sent Licensee Attorney Walter Drobenko a checklist of cited violations from his inspection. (See **State Exhibit 11**.)

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Licensee's Case

Licensee witness Drobenko is one of the three (3) brothers who own the building where the Licensed Premises is located and are principals of the Licensee. Drobenko stated that there were two (2) inspections on the date in question. The first inspection took place about one (1) hour before Stravalle's inspection. Drobenko stated that the first inspection was conducted by four (4) governmental representatives, including from the Authority, who found no COVID-19 violations. (See **Licensee Exhibit S**, photographs of the alleged inspectors.) Drobenko had no knowledge of the names of these alleged inspectors and no documentation related to their visit.

Drobenko denied that there were any COVID-19 violations at the Licensed Premises on the date in question, claiming the Licensee followed and complied with all promulgated COVID-19 requirements and regulations, particularly cleaning and disinfecting protocols. (See **Licensee Exhibit N**, COVID-19 Cleaning and Disinfection Log Template.) The Authority issued a notice to Drobenko commanding his attendance at this Hearing. (See **State Exhibit 19**.)

Licensee witness Figueroa also executed an affidavit in support of his testimony. He is a New York State-licensed architect and managing principal of SRA Architecture and Engineering, a firm specializing in architecture, engineering and code compliance. His organization specializes in obtaining New York City Department of Buildings (DOB) approval to construct eating and drinking establishments. (See **Licensee Exhibits A and D**.)

Figueroa attested that the Licensed Premises is an approved DOB establishment with a DOB-approved Place of Assembly Certificate and New York City Fire Department Place of Assembly Permit. (See **Licensee Exhibits A and D**.) He also attested that he visited the Licensed Premises during July and August of 2020 and recently, both professionally and as a patron. He was unable to give any exact dates. Figueroa described the Licensed Premises as an eating and drinking establishment with a rear yard outdoor space with a seasonal temporary enclosure constructed of metal framing and a canvas roof with wall panels, which he claims constitutes an open air space since the roof is not fixed and air flows from two (2) sides. He stated that there are two (2) exits. (See **Licensee Exhibits C**, photographs taken in October 2020, and **D**.)

Figueroa contends in testimony and his affidavit that Stravalle misstates that the outside rear yard space was converted into an inside space with walls and a canvas roof. To the contrary, Figueroa contends that, on the date on which he visited the Licensed Premises in September 2020, the subject rear yard space was an open air space with a removable seasonal covering allowing open air to circulate. He further contends that the strips of decorative canvas hang at various heights to create airflow. He did not explain how such airflow is created.

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Figueroa further contends that Stravalle misinterprets the Department of Health (DOB) guidance that states that an area "may have a temporary fixed cover (e.g., awning or roof) so long as such cover has at least two open sides for airflow." Figueroa attests that Stravalle misinterpreted and misapplied the foregoing by interpreting the DOH guidance to require that the structure be fully open on two (2) sides. Figueroa points out in his affidavit that the third wall of the rear yard area in question is a partial wall with a two (2)-foot air gap between the open air half wall and staggered strips of decorative canvas. Figueroa attests that this constitutes, to a reasonable degree of architectural certainty, compliance with the DOH guidance.

Figueroa goes on to say that Stravalle was unqualified to make any compliance determination regarding the DOH guidance, does not understand the DOH guidance and his determination that the subject rear space is not an outdoor space is incorrect. The summons issued during the inspection to the Licensee regarding this alleged violation was dismissed. (See **Licensee Exhibit E**.) Figueroa also testified that he observed two (2) exits at the Licensed Premises, including a roll-down gate for ingress and egress, as well as security personnel.

When presented with **State Exhibit 4**, photographs of the subject rear area taken by Stravalle during his inspection which showed that the struts that were uncovered in **Licensee Exhibit C** with arrows denoting open air flow were totally covered over in Stravalle's photographs, Figueroa stated that he didn't recall seeing what was shown in Stravalle's photograph and was not at the Licensed Premises on August 7, 2020 and he could not comment further.

Licensee witness Petrillo also executed an affidavit in support of his testimony. (See **Licensee Exhibit B**.) Petrillo worked in law enforcement for thirty-one (31) years. From March 1, 2003 to March 21, 2020, he was the 10th Precinct Community Affairs Officer focused on mitigating crime activity by strengthening community relationships and trust. He also implemented programs to address nightclub complaint issues. He has worked closely with the Authority, New York City Fire Department, the Department of Buildings and the New York State Police. He states that he participated in over a thousand (1,000) compliance and enforcement inspections. He retired in early 2020 and has not participated in any inspections since then.

On September 15, 2020, Petrillo personally visited and inspected the Licensed Premises, including the entire rear yard area. He was told that this area was set up in the same manner and in the same condition as during Stravalle's August 7, 2020 inspection. Petrillo stated that Stravalle was mistaken in all of his determination of COVID-19 violations of promulgated orders/rules.

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Petrillo also charges Stravalle with having committed COVID-19 violations by creating unidentified "hazards" during his Inspection. In particular, Petrillo stated that:

- on the date of his Inspection, the outdoor rear area was in a "lawful summer season" setup (fabric tent roof removable with decorative canvas strips well below the roof line and with open air flow access. According to Petrillo, the entire rear yard south side has an approximate two (2)-foot deep air gap with hanging decorative canvas. He also stated that Stravalle never went into the southwest corner of the area to look up and verify his conclusions of a covered area.
- Stravalle's finding of approximately twenty (20) guests at dining tables in the rear area is factually wrong and Petrillo claims that Stravalle never took any measurements between tables or people.
- he disputes Stravalle's observations of the outside congregation of entering patrons, claiming that there is no evidence of COVID-19 violation showing in the video taken by Stravalle in State Exhibit 23.

Petrillo stated that he was compensated for his testimony.

Licensee witness Katzman is an interior designer and graphic artist whose clients are typically retail establishments (particularly restaurants). She provides interior design, print and graphic advice and services to her retail clients to promote branding and interior décor for dining establishments. The Licensee is one (1) of her clients, for whom she performed design work during the July-to-August 2020 time period. This design work included art installations in the interior and on windows and particularly in the back area of the Licensed Premises.

Katzman described her work in the back area of the Licensed Premises as creating the "illusion" that the area was not exposed to the outdoors and was a covered space. (See various photographs in **State Exhibit 4, Licensee Exhibits C and CC.**) She described it as a "temporary solution." She further described the manner in which she created this "illusion" was by hanging and layering canvas fabric pieces on the walls and creating a canvas fabric ceiling over a metal infrastructure covering the top of the area in a manner that would allow ventilation but no light.

Evidently, a six (6)-foot by twenty (20)-foot gap in the canvas material on the southern wall provided the ventilation, as best I understood. She did not describe the ventilation as creating an open air quality. The canvas material used was porous but weatherproof.

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Katzman claims that the ventilation gap(s) could be seen from the interior of the back area. She never viewed Stravalle's audio/video contained in **State Exhibit 23.**) Katzman was not paid to testify.

Licensee witness Garber was a patron of the Licensee's on August 7, 2020. He is a student at Pace University Law School. On this date, he was celebrating his sister's birthday with other family members. They were all seated in the rear area of the Licensed Premises described by Licensee witness Katzman. He asserted that there were only ten (10) individuals in this back area, as per **Licensee Exhibit DD**, a photograph allegedly taken of the area on the date in question. Garber described the ceiling and walls of the rear area as draped with white fabric with splits where sky could be viewed and a breeze could be felt. He later described this fabric as canvas-like. He also viewed the **State Exhibit 4** photograph of the rear area, but stated that the photograph was taken from a different angle and the splits were not evident.

Charge 2

Authority's Case

Authority witness Stravalle, during his Inspection, observed that the Licensed Premises was open and that a roll-down gate was not maintained in an open position. Stravalle determined that the closed gate cut off required emergency egress from the back area of the Licensed Premises, which was occupied by patrons. (See photographs contained in **State Exhibits 2, 3 and 11.**) Stravalle cited the closed-gate condition as a violation of New York City Building Code (NYCBC) Section 1008.2. Licensee Principal Drobenko accompanied Stravalle during the Inspection and acknowledged the cited violation. (See **State Exhibit 23**, video and audio of the Inspection.)

Licensee's Case

Licensee witness Drobenko is one of the three (3) brothers who own the building where the Licensed Premises is located and are principals of the Licensee. He stated that, on the date in question, he followed the normal procedure of checking that all operational systems were in working order and compliant with requirements. He said that the subject roll-down gate was open initially but when Stravalle arrived with the other officials and a camera crew from "Inside Edition" (a televised news program), he instructed the fire guard to pull down the roll-up gate in the interests of safety. He also stated that an earlier compliance inspection never noted a violation for the roll-down gate. The roll-down gate was never locked. (See **Licensee Exhibit L.**)

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Charge 3

Authority's Case

Authority witness Stravalle, during his Inspection, entered the basement area and observed an emergency light which was flickering and, thus, not maintained in proper working order. Stravalle cited this condition as a violation of NYCBC Section 1006.3. (See **State Exhibits 2, 3 and 11.**) Licensee Drobenko accompanied Stravalle during the Inspection and acknowledged the cited violation. (See **State Exhibit 23**, video and audio of the Inspection.)

Licensee's Case

Licensee witness Drobenko stated that, during the Inspection, he checked the emergency lighting system and pushed the on-and-off buttons. One (1) emergency light flickered, but then turned on and remained on.

Drobenko stated that he had checked the system earlier and all emergency lights were working. (See **Licensee Exhibit K** for the pertinent regulatory section.) (See also **Licensee Exhibit BB**, Rodriguez's statement,

Charge 4

Authority's Case

Authority witness Stravalle, during his Inspection, observed that the Licensee provided hookah equipment for patrons' use and pleasure. Stravalle also observed that the Licensee did not have the required business permit for hookah use and that hookah coals were exposed and not in a stationary vented and DOB-approved "furnace." (See **State Exhibits 2, 3 and 11.**) Stravalle cited this condition as a violation of New York City Fire Code (NYCFC) Section 310.7.3.3. Licensee Principal Drobenko accompanied Stravalle during the Inspection. (See **State Exhibit 23**, video and audio of the Inspection.)

Licensee's Case

Licensee witness Drobenko stated that he had the required business permit for hookah use, which he showed to Stravalle and is not required until October 1, 2021, but did not have a DOB-approved vented furnace, which Drobenko claims is not required until October 2021. (See **Licensee Exhibit F** for the pertinent regulatory section highlighted.)

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Charge 5

Authority's Case

Authority witness Stravalle, during his Inspection, observed that the visibility of an exit sign above an emergency exit was obstructed by branches and leaves. (See **State Exhibit 4**, a photograph of the roll-down gate with surrounding leaves.) Stravalle cited this condition as a violation of New York City Administrative Code Section 27-451. Principal Drobenko accompanied Stravalle during the Inspection and acknowledged the cited condition. (See **State Exhibit 23**, video and audio of the Inspection.)

Licensee's Case

Licensee witness Drobenko contends that the subject exit sign was partially obstructed, not blocked and, in any event, was visible. (See **Licensee Exhibit G** for the pertinent regulatory section highlighted.)

Charges 6 and 11

Authority's Case

Authority witness Stravalle, during his Inspection of the basement of the Licensed Premises, observed a fire extinguisher which had its last annual inspection on June 20, 2020. Stravalle explained that, in addition to the annual inspection, NYCFC Section 604.6 requires monthly inspections which must be noted on the inspection tag attached to the fire extinguisher. The subject inspection tag had no noted monthly inspection for July 2020. (See **State Exhibits 2, 3 and 11**.) Stravalle cited this condition as a violation of the above cited section of the NYCFC. Principal Drobenko accompanied Stravalle during the Inspection and acknowledged the cited condition. (See **State Exhibit 23**, video and audio of the Inspection.)

Charge 11 is duplicative of this Charge 6.

Licensee's Case

Licensee witness Drobenko claimed that all the fire extinguisher tags at the Licensed Premises were checked monthly by the Licensee's staff. (See **State Licensee Exhibit AA**, showing inspection dates of August 1, 2020; September 11, 2020; and October 7, 2020.)

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Drobenko further stated that all the fire extinguishers were checked in conformity with NYCFC Section 906, as contained in **Licensee Exhibit X**. (See also **Licensee Exhibit Y**, photograph, fire extinguisher tag.)

Charge 7

Authority's Case

Authority witness Stravalle, during his inspection, observed at the Licensed Premises an exit door obstructed by a curtain. Stravalle cited this condition as a violation of NYCFC Section 1028.5. (See **State Exhibits 2, 3 and 11**.) Principal Drobenko accompanied Stravalle during the inspection and acknowledged the cited condition. (See **State Exhibit 23**, video and audio of the inspection.)

Licensee's Case

Licensee witness Drobenko denied that the subject curtain blocked the exit since it was pinned back on the sides and he could walk through the exit without touching the curtain. (See **Licensee Exhibit H** for the pertinent regulatory section.)

Charge 8

Authority's Case

Authority witness Stravalle, during his inspection, observed numerous candles lit at the Licensed Premises. Stravalle reviewed the Licensee's Place of Assembly Permit (Permit) issued by the New York City Fire Department to determine if the Permit allowed the use of candles. The Licensee's Permit expired on November 20, 2019. (See **State Exhibit 4**.) Thus, the Licensee did not have an in-force open-flame permit, as required. Stravalle cited this condition as a violation of NYCFC Section 105.6. (See **State Exhibits 2, 3 and 11**.) Principal Drobenko accompanied Stravalle during the inspection and acknowledged the cited condition. (See **State Exhibit 23**, video and audio of the inspection.)

Licensee's Case

Licensee witness Drobenko admitted that candles were in use during Stravalle's visit and that, when asked by Stravalle to produce an in-force Permit, he showed Stravalle an expired Place of Assembly open-flame permit by mistake.

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Subsequently, after the Inspection was completed, Drobenko found a currently in-force Place of Assembly Permit with the open-flame Permit, which was inadvertently hidden behind other permits. (See **Licensee Exhibit A**. See also **Licensee Exhibit V**, candles allowed on outdoor tables.)

Charge 9

This Charge was withdrawn by the Authority as it is duplicative of Charge 3 discussed *supra*.

Charge 10

Authority's Case

Authority witness Stravalle, during his Inspection, observed three (3) instances where extension cords were used as a form of permanent wiring. He observed this condition in the basement, near the liquor room and wrapped around portions of the sprinkler system pipe by the gas tanks and behind the bar in connection with the face scanner. Stravalle cited this condition as a violation of NYCFC Section 605.5. (See **State Exhibits 2, 3 and 11**.) Principal Drobenko accompanied Stravalle during the Inspection and acknowledged the cited condition. (See **State Exhibit 23**, video and audio of the Inspection.)

Licensee's Case

Licensee witness Drobenko admitted that, during Stravalle's inspection, there were three (3) extension cords being used for permanent wiring, as described by Stravalle. The two (2) in the basement were used for the comfort of employees to operate fans to cool off the basement area and to avoid tripping. The third behind the bar was used to operate a portable scanner to check body temperatures of patrons and assure face mask compliance. (See **Licensee Exhibit M** for the pertinent regulatory section.)

Charge 12

Authority's Case

Authority witness Stravalle, during his Inspection, asked Principal Drobenko for log records confirming that emergency lighting had been tested monthly, as required by NYCFC Section 604.6.1. The Licensee was unable to produce the requested records. Stravalle cited the Licensee for this violation. (See **State Exhibits 2, 3 and 11**, as well as **State Exhibit 23**, video and audio of the Inspection.)

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Licensee's Case

Licensee witness Drobenko denies that Stravalle even asked to see the subject records. At Hearing, Drobenko produced **Licensee Exhibits J** (the pertinent regulatory section) and **Z** (log records).

Charge 13

Authority's Case

Authority witness Stravalle, during his Inspection, observed in the basement of the Licensed Premises three (3) compressed gas tanks chained to each other on the floor and not properly secured. Stravalle cited this condition as a violation New York State Fire Code 3003.3.3. Licensee Principal Drobenko accompanied Stravalle during the Inspection and acknowledged the cited condition. (See **State Exhibit 23**, video and audio of the Inspection.)

Licensee's Case

Licensee witness Drobenko admits that the subject gas tanks were standing up and chained together on the floor during Stravalle's visit, but claims that their standing up did not present a danger. He further stated that one (1) gas tank was full and two (2) were empty. (See **Licensee Exhibit I** for the pertinent regulatory section.)

Charge 14

Authority's Case

Authority witness Stravalle stated that, before entering the Licensed Premises and commencing the Inspection, he observed on the outside of the Licensed Premises a sign that named the establishment as Cafe Tucano. (See **State Exhibit 4**, photograph.) This trade name was not authorized by the Authority and does not appear on the current liquor license or original license application or the latest renewal application. The only approved trade name is Cloister Café. (See **State Exhibits 2, 3, 8, 9, 10 and 11**.) License Principal Drobenko acknowledged the use of the trade name Cafe Tucano by the Licensee. Receipts for sales in the Licensed Premises showed the trade name Cafe Tucano. (See **State Exhibit 14**.)

Authority witnesses Zitelli and Schreiber also testified that there was a sign outside the Licensed Premises with the trade name Cafe Tucano, which individuals associated with the Licensed Premises told them that the Licensed Premises was using.

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Licensee's Case

Licensee witness Drobenko admitted that there was an outside wall mural on the Licensed Premises with the trade name Cafe Tucano displayed. He stated that it was the Licensee's original intent to use this trade name to designate an outside seasonal sidewalk table area being planned and the seasonal front garden area of the Licensed Premises. He admitted that receipts shown to Stravalle during the Inspection had the words "Cafe Tucano" printed on them. (See **State Exhibit 14.**) He added, however, that these receipts represented sales for the front garden area.

Charge 15

Authority's Case

Authority witness Zitelli has resided at 139 Second Avenue, Apt. 10 for six (6) years and in New York City for twenty-five (25) years. He works from home as a free-lance graphic artist. His building has twenty five (25) apartments. He described the area surrounding his apartment building as residential with many businesses including restaurants and bars. He also described his neighborhood as diverse and lively.

Zitelli knows the Licensed Premises—he has eaten there a number of times and his apartment overlooks the rear area of the Licensed Premises. He described his apartment's layout as a third-floor railroad-style unit with the bedroom in the back of the apartment overlooking the Licensed Premises' back area, which he estimated was twenty (20) yards from his bedroom window. He described the Licensed Premises' back area as a garden area enclosed with a roof.

Zitelli said that he had no reason to complain about the Licensed Premises until the summer of 2020 during the COVID-19 pandemic period. Starting in June 2020, he observed that the entrance gate of the Licensed Premises was open. (See the photograph in **State Exhibit 4.**) It appeared to him that construction was occurring. Then in July 2020, loud and pounding music started emanating from the Licensed Premises from 11:00 P.M. to at least 3:00 A.M., Tuesday through Saturday nights. He described the music as so loud and intrusive that he was unable to sleep. Although he works from home, he maintains normal 9:00 A.M. to 6:00 P.M. work hours to meet his clients' needs, and the loud, pounding music along with the noise from patrons in the back area of the Licensed Premises interfered with his sleep. According to Zitelli, this loud, constant noise created an unbearable living condition for him and adversely affected his ability to work effectively.

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Zitelli attempted unsuccessfully on two (2) occasions to access the Licensed Premises during the July to August 2020 period to speak to the management about the noise problem. On the first occasion, he observed that the entrance gate was open and crowds of people were "hanging out" and entering the Licensed Premises, many not wearing masks and not maintaining social distancing.

On the second occasion, he again saw people entering the Licensed Premises through a door, not through the entrance gate. When Zitelli tried to enter, he was stopped at the entrance and told that a private disco party was being held at the Licensed Premises—entrance was by invitation only. He made numerous 3-1-1 complaints with the City and was told a visit would be made to the Licensed Premises by a City official to take a noise meter reading. To his knowledge a noise meter reading was never taken.

Zitelli said that the Licensed Premises was closed for a while during August 2020, but then it reopened. He added that when it reopened that part of the roof over the back area had been removed and replaced by what he believed was a loose muslin cover to get around COVID-19 restrictions. While the excessive noise from the music stopped, the chattering and conversational noise caused by the patrons was so loud that it created another nuisance and he again suffered continuing sleep deprivation.

Zitelli confirmed that other residents in his building were also bothered by the music and noise from the Licensed Premises and had made complaints. Zitelli also stated that there were no other neighboring licensed establishments open that could have caused this excessive noise.

Authority witness Schreiber has resided at 139 Second Avenue for twenty-four (24) years. Her fourth-floor apartment also has a railroad layout, with her bedroom facing and directly above the back area of the Licensed Premises. She resides there with her husband. She works as a hairdresser and her husband is employed in the entertainment industry. He rises at 6:00 A.M. to go to work.

Schreiber stated that noise emanating from the Licensed Premises has been a continuing problem since 2011, but has worsened since July 2020 when music coming from the back area of the Licensed Premises became a continual, unbearable throbbing beat when the Licensed Premises was open, starting about 10:00 P.M. and lasting well after 4:00 A.M. In addition to the throbbing, there were disco lights flashing, loud conversation and even screaming, all of which make it impossible for her or her husband to sleep. She described the atmosphere of the Licensed Premises as a night club.

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Schreiber has complained about the noise problem to the police, the New York City Public Advocate Office, the New York Environmental Office and the local community board and has alerted the press, in addition to lodging numerous and daily 3-1-1 complaints, in excess of thirty-five (35). No action to remedy the problem has been taken by the authorities.

In particular, on July 16, 2020, Schreiber physically went to the Licensed Premises to speak to the Licensee's management. She observed a line of people waiting to enter the Licensed Premises, none of whom were wearing masks. A woman with a list was waiting at the entrance. Schreiber asked to speak to the management, but the management refused to speak with her and she was barred from entering. People waiting in line ridiculed her and an unknown person threw what she described as a glass at her, which hit the back of her head.

She also telephoned the Licensed Premises numerous times during this July-August 2020 period and spoke once with Licensee Principal Drobenko to complain about the noise, but he denied there was any noise. The other times the phone calls were not answered. Recently she took a sound reading apparently in her apartment and noise from the Licensed Premises registered eighty-seven and three-tenths (87.3) decibels, which, according to Schreiber, was well over the allowable limit of forty (40) or so.

Schreiber stated that she and her husband are suffering from ongoing sleep deprivation. They have tried earplugs, running the air-conditioner fan and sleeping in the apartment's kitchen, to no avail. This has caused a major disruption in her life and her husband's, and has interfered with their getting to work on time. She further stated that her neighbors have also complained about the unbearable noise emanating from the back area of the Licensed Premises.

Affidavit of Daniel Jerome Bourassin (Bourassin)

On September 22, 2020, Bourassin executed a sworn affidavit contained in **State Exhibit 16** in support of this Charge. This affidavit was admitted into evidence in lieu of direct testimony due to Bourassin's unavailability. In said affidavit, Bourassin stated the following:

- He has resided at 139 Second Avenue, three (3) floors above the backyard area of the Licensed Premises for one (1) year and a half (½).
- From July 21, 2020 to August 7, 2020, he heard recurrent loud party noise (talking, singing and screaming) and high-volume electronic music emanating from the Licensed Premises, five (5) days a week until 4:00 A.M.
- The noise has been so loud that he is forced to wear earplugs, which do not diminish the noise.
- This recurring noise has impacted his sleep and daytime productivity.

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Bourassin also attached records of sixteen (16) 3-1-1 reports that he filed between July 31, 2020 and August 7, 2020 to his affidavit.

Affidavit of Chad Caesar Uy (Uy)

On September 25, 2020, Uy executed a sworn affidavit contained in **State Exhibit 17** in support of this Charge. This affidavit was admitted into evidence in lieu of direct testimony due to Uy's unavailability. In said affidavit, Uy stated the following:

- Uy has resided at 240 East 9th Street, which is next door to the Licensed Premises, for one (1) year.
- Since on and before August 7, 2020, Uy has observed loud bass music emanating from the Licensed Premises. He could hear this music over his air condition and despite wearing earplugs. The bass of the music makes it difficult for him to sleep, which has caused him anxiety. The music has continued on Thursday-Friday-Saturday nights from June 2020 through July 2020 and later from 10:00-11:00 P.M. to past 1:00 A.M.
- Uy went to the Licensed Premises during this period and confirmed that the subject noise emanated from the Licensed Premises. He also observed patrons waiting in line and employees outside working as bouncers, only some of whom were wearing masks, others were not.
- He has made five (5) 3-1-1 complaints about the subject noise.

Authority Attorney Marsico submitted into evidence **State Exhibit 5**, 3-1-1 noise complaint reports received regarding the Licensed Premises for the period of July 12, 2020 to August 5, 2020. They were produced in the normal course of police business. The Exhibit documents thirty-five (35) noise complaints lodged during the cited period. It was compiled in the normal course of police business by Lieutenant Peter Hsieh. (See **State Exhibits 20 and 21.**) **State Exhibit 22** contains records of well over twenty (20) 3-1-1 complaints made specifically by Zitelli during July 2020.

Licensee's Case

Licensee witness Drobenko denies that there was any noise problem for area residents emanating from the Licensed Premises. He admitted that the back of the apartments at 139 Second Avenue face the back area of the Licensed Premises, but asserted that that any noise problem for residents was attributable not to the Licensed Premises but to other surrounding licensed establishments, the names of which he did not supply. He admitted that he knew about Zitelli's and Schreiber's visits to the Licensed Premises, but denied any knowledge of noise complaints. He stated that the police never told him that the Licensed Premises was too noisy.

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Licensee witness Petrillo also executed an affidavit in support of his testimony. (See **Licensee Exhibit B**.) His credentials are summarized supra and in the affidavit. Petrillo reviewed and investigated the listing of 3-1-1 calls contained in "Exhibit 7." The alleged "Exhibit" was not attached and, thus, not introduced into evidence. **State Exhibit 5**, as admitted into evidence, contains the only police record of 3-1-1 calls for July 12, 2020 through August 5, 2020.

Petrillo states that he checked the incident reports for each 3-1-1 call identified in the supposed Exhibit 7 and spoke with police officials. He further states that "almost every single call was 'anonymous, unfounded' and was 'closed.'" Petrillo further contends that the New York City Police Department would have "shut down" the Licensed Premises if it had been operating in a dangerous manner. He also contends that "noise attribution," i.e., determining noise complaints and verifying them, is tricky and not easy to confirm.

Charge 16

Authority's Case

Authority witness Stravalle, during the investigation, observed that the Licensee utilized security guard services. Stravalle recognized two (2) security guards who were dressed in traditional black. Licensee Principal Drobenko confirmed to Stravalle that he used the security guards on duty on the date in question and they were provided by a third-party security services firm, Professional Security Company.

Stravalle then determined that the two (2) security guards had expired security guard licenses. He also determined that the security guard company identified by Drobenko as supplying him security guard services was not properly registered with New York State. Additionally, the Licensee did not maintain the legally required security guard license to employ security guards and did not have legally required general liability insurance coverage filed with the State of New York to employ security guards. (See **State Exhibits 2, 3 and 11**.)

Licensee's Case

Licensee witness Drobenko denied that he employs or ever employed security guards. He stated that he employed a fire guard and COVID-19 enforcer personnel named Rivera and Rodriguez, who were trained to determine compliance with DOH COVID-19 guidelines. He did not know and never did business with an entity named Professional Security Company. (See **State Exhibit BB**, Rodriguez's License.)

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Charge 17

Authority's Case

Authority witness Stravalle, while inside the Licensed Premises during the Investigation, heard loud music playing inside the Licensed Premises. During the Inspection, Stravalle observed a DJ station in an indented/recessed area of the Licensed Premises and saw an individual with headphones playing music at the station. (See **State Exhibits 2, 3 and 11.**) (See also **State Exhibit 23.**)

Authority witnesses Zitelli and Schreiber testified that they heard loud throbbing music and flashing lights emanating from the Licensed Premises creating what they both described as a nightclub or disco atmosphere.

Licensee's Case

Licensee witness Drobenko denied that the Licensee had live music, a DJ booth, or both, or utilized a DJ form of music. He stated that the "DJ station" observed by Stravalle was a soundboard area where a sound technician set lighting, music flow and temperature control once nightly and checked the settings periodically. Drobenko stated that it was possible that Stravalle saw an individual with headphones, but the individual was not a DJ.

Charge 20

Authority's Case

It is a matter of record that the Licensed Premises was originally and has been continuously licensed as a restaurant. (See the license contained in **State Exhibits 8, 9 and 10**, and Renewal Applications for On-premises Liquor License, on which it is stipulated that the Licensee's Method of Operation is "restaurant serving beer, wine, cider and liquor.")

During the Inspection, Stravalle asked to review the sales receipts of the Licensed Premises for the date in question since he did not observe the level of food service and consumption typical of a restaurant operation. Upon reviewing the receipts, as contained in **State Exhibit 14**, he noted that approximately ninety five percent (95%) of the sales were for alcoholic drinks and for hookah use and only three percent (3%) to four percent (4%) for food consumption. This did not conform to the operation of a bona fide restaurant.

Moreover, in routinely checking New York State Department of State (NYSDS) records, Stravalle found that the Corporate Licensee, The Cloister East, Inc., was dissolved by proclamation on September 29, 1993. (See **State Exhibits 6 and 6A.**)

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Licensee's Case

Licensee witness Drobenko stated that the receipts given to Stravalle (in **State Exhibit 14**) did not represent all food service and consumption at the Licensed Premises on the date in question. He stated that the Licensee regularly provides all patrons with complimentary cheese spread and guacamole dip. No additional copies of receipts were provided by the Licensee to support this contention.

Regarding the dissolution of the Corporate Licensee in 1993, Drobenko denied any knowledge of said dissolution, had no idea why such dissolution would have occurred and asserted that he regularly and always paid all federal, state and local taxes for all years that the Licensed Premises operated. To substantiate the foregoing, the Licensee submitted **Licensee Exhibits P, Q and R**, tax records for 2018, 2019 and January 1, 2020 to January 31, 2020.

Charges 21, 22 and 23

Authority's Case

Authority witness Stravalle, as stated above in a routine check of NYSDS records, found that the Corporate Licensee was dissolved by proclamation on September 29, 1993. (See **State Exhibit 6 and 6A.**) At no time did the Licensee ever notify the Authority of this change in status, as required by Section 110(4) of the Alcoholic Beverage control Law.

Moreover, in the Licensee's most recent license renewal applications for 2017-2019 and 2019-2021, respectively, the licensee was represented as The Cloister East, Inc., a dissolved and defunct corporation. In addition, Stravalle learned that there was an outstanding tax warrant docketed on October 24, 2019 in the New York County Clerk's Office, showing a tax debt due the State Department of Taxation and Finance (NYS DTF) in the amount of one hundred forty-one thousand, eight hundred four dollars and forty-four cents (\$141,804.44). (See **State Exhibits 7 and 15.**)

Licensee's Case

Licensee witness Drobenko denied any knowledge that the Corporate Licensee was ever dissolved in 1993 or that there was any warrant outstanding against the Corporate Licensee for taxes owed. In cross-examination, he stated that he was not aware that the NYSDTF could unilaterally dissolve a domestic corporation for failure to pay taxes for five (5) or more years. He further stated that his accountant was working to resolve this matter.

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Charge 24

Authority's Case

This Charge alleges that the Licensee, through the actions and/or inactions of its principal(s), and/or its agents and employees, failed to exercise a high degree of supervision over the conduct of the business in violation of Rule 48.2 of the promulgated Rules of the Authority. As such, the Charge is an overarching Charge. The Findings of Fact, with respect to this Charge, are as set forth herein in connection with all of the other Charges (Charges 1 to 23) and are hereby incorporated as Findings of Fact with respect to this Charge and in the aggregate, are probative of this Charge.

Licensee's Case

Licensee witness Drobenko denied this Charge.

OPINION

Charges 1, 18 and 19 – There is substantial evidence to sustain these Charges. The gravamen of all three (3) Charges is alleged violations of Governor Cuomo's Executive Order 202.43 and associated posted Authority and DOH Guidance promulgated in response to the COVID-19 pandemic (collectively, "Rules and Regulations").

They were promulgated pursuant to Executive Order Number 202.43 issued by Governor Cuomo declaring a state-wide disaster emergency for the State of New York. As such, they have the force of law and mandate various protocols to be used by licensed establishments to address and contain the spread of the corona virus. In furtherance of and to ensure strict compliance with these COVID-19 Rules and Regulations, various state and city agencies, including, but not limited to, the Authority and the New York City Departments of Police, Fire, Buildings and Health are charged with enforcement authority to inspect licensed premises to assure strict compliance thereto.

As stated *supra*, an Inspection was conducted of the Licensed Premises on August 7, 2020 to determine if the Licensed Premises was compliant. Stravalle, a representative of the Authority, participated in this Inspection. He stated that he was trained in COVID-19 enforcement requirements.

These Charges, in essence, fall into three (3) buckets:
(1) the outside front area of the Licensed Premises—complying with social distancing and protective wearing of masks;

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- 2) whether the outside rear area was converted to an enclosed space or not, with proper air flow or not and compliance with social distancing and protective mask wearing; and
- (3) patrons not wearing masks—two (2) females kissing and patrons walking around maskless.

I credit Stravalle's testimony regarding his observation of the outside front area, which he made when he arrived at the Licensed Premises and memorialized by the video in **State Exhibit 23**. As corroborated by the video/audio that he took, he testified that there were at least ten (10) people congregating in front of the Licensed Premises waiting to enter, but not practicing required social distancing of six (6) feet between individuals. It appears that these individuals were wearing protective masks, as described by Stravalle. Any testimony by the Licensee's witnesses contrary to the foregoing, I do not find credible as self-serving, irrelevant and conclusory, as described below.

Licensee witness Figueroa admitted that he was not present at the Licensed Premises on the date in question, but at other times, namely in September 2020. When he did visit the Licensed Premises, he stated that he did not observe the conditions described by Stravalle outside the Licensed Premises. His testimony in this regard is of little probative value and does not substantially rebut Stravalle's eyewitness testimony on the date in question. Whatever conditions may or may not have existed when Figueroa visited the Licensed Premises in September 2020 are not relevant to the Charge regarding conditions on the date in question, August 7, 2020.

Additionally, his testimony regarding the rear area is also not relevant since he only visited the licensed Premises in September 2020. Moreover, due to the business and patron relationship of Figueroa with the Licensed Premises, his testimony is, in my opinion, self-serving.

Licensee witness Petrillo's testimony is even more attenuated and conclusory. He allegedly "inspected" the Licensed Premises in September 2020, one (1) month after the date in question. He was also not present at the Licensed Premises on the date in question and attempts to impugn Stravalle's testimony by claiming that the video/audio shows only six (6) people congregating outside the Licensed Premises.

Moreover, Petrillo admitted that he was being paid to testify, a fact that undercuts his credibility. Again, Stravalle's eyewitness testimony trumps Petrillo's unfounded interpretation of what the video/audio showed.

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When Stravalle entered the Licensed Premises, he saw patrons "milling about" in areas where he observed some of the wait staff not wearing protective masks or not wearing them properly. He also observed two (2) women kissing. Viewing the video, it appeared to me that there were individuals not wearing protective masks. Whether they were employees or not, COVID-19 Rules and Regulations require protective face covering at all times. Moreover, the two (2) females kissing was an inexcusable violation of these Rules and Regulations.

Licensee witness Drobenko admitted that there were two (2) females kissing in the Licensed Premises on the date in question, but claimed that they were saying goodbye and, after kissing, left immediately. Whatever the reason or circumstance surrounding the kissing, momentary or otherwise, its very occurrence is a serious violation of COVID-19 Rules and Regulations. Neither Licensee witness Figueroa nor Petrillo provided any testimony regarding the kiss, nor did Licensee witness Katzman or Garber..

Stravalle also inspected the rear area of the Licensed Premises where patrons were seated drinking and dining. It is this area that is the focus of dispute. (See the photograph attached to State Exhibit 4 as well as Licensee Exhibits C and CC.) Stravalle testified that he saw over ten (10) people sitting or standing in an approximate twenty (20)-by-twenty (20)-foot area who were not properly socially distanced per the COVID-19 Rules and Regulations.

Stravalle described this rear area as having brick walls and a canvas roof. The Building inspector who accompanied Stravalle on the Inspection described the canvas cover as a roof. It should also be noted that Authority witnesses Zitelli and Schreiber described the canvas cover over the top of the back area as a roof that blocked the entire area from view from above.

Stravalle determined that this area did not constitute an "open air" space within the requirements of the Rules and Regulations. Therefore, he found the cited violation of COVID-19 Rules and Regulations, as corroborated by Stravalle's video/audio contained in State Exhibit 24. I concur with Stravalle's determination. The Licensee's argument that Stravalle is mistaken is based on testimony and photographs related not to the date in question of August 7, 2020 but to a later date in September 2020, a time interval that undercuts the Licensee's position.

In my opinion, the setup of the enclosure exhibited by the back area on the date in question transformed it, for all intents and purposes, into an enclosed space under the requirements of any of the Rules and Regulations (Executive Order 202.3, DOH or Authority guidelines).

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Whether this was intended or not is irrelevant since, given the serious public health threat then presented by the pandemic, application of COVID-19 protective requirements should in the public interest be applied strictly. The fact remains that, on the date of the Inspection, the back area at issue reasonably appeared to Stravalle to be enclosed, not an open air space. It appears to me to be enclosed, based on State Exhibit 4 and Stravalle's testimony.

Licensee witnesses Figueroa, Petrillo, Katzman and Garber argue that Stravalle's determination in the above regard is faulty. Figueroa contended that this back area was always intended as a seasonal patio and had open air circulation. He took a photograph as shown in Licensee Exhibit C of one (1) of the walls of this back area with open air vents, which he claims always existed and which allowed required air flow. This photograph was taken in September 2020 during one (1) of his visits to the Licensed Premises. Again, since it does not represent the subject back area on the date in question, its probative value is diminished.

Licensee witness Petrillo, in his affidavit, attacks Stravalle's determination as incorrect, mistaken and a misinterpretation of COVID-19 Rules and Regulations. Again, Petrillo was not present at the Licensed Premises on the date in question and his testimony is ultimately speculative and conclusory.

Licensee witness Katzman stated that the back area met open air requirements, but was designed to give the "illusion" of an enclosed space by use of layered canvas covering. This illusion created a kind of enclosure, which was viewed by Stravalle and Authority witness Zitelli as a "roof," not an open air space per COVID-19 Rules and Regulations. Again, I discount Katzman's and Garber's testimonies in this regard as self-serving, in any event, since Katzman performed design and decoration work for the Licensee for which she was remunerated and Garber is an admitted patron of the Licensee.

Lastly, Licensee witness Drobenko testified that, an hour before Stravalle conducted the Inspection, an "SLA" investigator visited the Licensed Premises and found that the Licensed Premises was in compliance with all COVID-19 Rules and Regulations. He could provide no details about the investigator or any documentary material substantiating this inspection or its results. The probative value of this testimony is, therefore, minimal and clearly self-serving.

Based on the foregoing, I find that Charges 1, 18, and 19 are sustained.

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Charge 2 - There is substantial evidence to sustain the Charge. It is undisputed that the subject roll-down gate was not in a locked open position and closed when the Licensed Premises was open. I credit Stravalle's testimony that this condition cut off one (1) of the required egress points of the Licensed Premises. (Licensee Exhibit D has attached diagrams of the layout of the Licensed Premises.) Like a door, the gate should have been open and remained open while business was being conducted. The findings of any prior inspection are hearsay, which I do not credit.

Charge 3 - There is not substantial evidence to sustain the Charge. I credit Licensee witness Drobenko's testimony that, while the subject emergency light may have initially flickered when Stravalle touched the on-and-off switch, the flickering appears to have been momentary and, therefore, *de minimus* since the light came on, as required. I also credit Licensee witness Drobenko's testimony that the emergency lights are regularly checked.

Charge 4 - There is not substantial evidence to sustain the Charge. It is my reading of applicable Fire Department Rules. (Licensee Exhibit F) that certain operational and maintenance requirements regarding the presence of hookah pipes for on-premises smoking became effective October 1, 2020. It is further my reading of the Rule that the exposure of the hookah coals not in a stationary vented and DOB-approved furnace constituted an operational and/or maintenance requirement, compliance with which was not required until October 1, 2020, after the date of the Inspection on August 7, 2020. I also credit Drobenko's testimony that he showed the necessary business permit for hookah use.

Charge 5 - There is substantial evidence to sustain the Charge. New York City Administrative Code Section 27-541 requires an exit sign to be "clearly visible." In my opinion, the sign at issue was not clearly visible since "clearly" implies the absence of any and all obstruction and the leaves and branches shown in the subject photograph interfered with the clear viewing of the exit sign, as alleged.

Charge 6 - There is not substantial evidence to sustain the Charge. I credit Drobenko's testimony and Licensee Exhibits X and AA that, in fact, fire extinguishers were inspected on a monthly basis, as legally required.

Charge 7 - There is substantial evidence to sustain the Charge. New York City Fire Code 1028.5 provides that "furnishings, decorations or other objects shall not be placed so as to obstruct exits, access thereto, egress there from, or visibility thereof."

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The curtain in question, even if pinned on the sides, constitutes an obstruction and, potentially, if unpinned a total barrier to visibility of the subject exit. In the event of a fire, this could present a dangerous condition, which the cited section is designed to prevent.

Charge 8 - There is not substantial evidence to sustain the Charge. It is undisputed that candles were burning in the Licensed Premises during the Inspection. While the Licensee did, in fact, have an open-flame permit at the time of the Inspection (per Licensee Exhibit A), Drobenko's failure to produce it upon Stravalle's request was due to an inadvertent error on the Licensee's part. Thus, the Licensee was, in fact, compliant on the date of Inspection.

Charge 9 - This Charge was withdrawn by the Authority during the Hearing.

Charge 10 - There is substantial evidence to sustain the Charge. It is uncontroverted that three (3) instances where extension cords were found to be used as a form of permanent wiring were found by Stravalle during the Inspection and acknowledged by the Licensee. Section 605 of the New York City Fire Code expressly states that extension cords shall not be a substitute for permanent wiring. Based on Drobeno's testimony, the Licensee was using these extension cords as substitutes for permanent wiring, particularly to cool off the basement area. The portability of the scanner does not undercut the violation created by the fans.

Charge 11 - This Charge is duplicative of Charge 6, discussed above.

Charge 12 - There is not substantial evidence to sustain the Charge. Given the direct conflict in the testimonies of Stravalle and Drobenko regarding Stravalle's request to see the required records, I credit Drobenko's testimony that activation records were, in fact, regularly and continuously kept, as contained in Licensee Exhibit Z. These records conformed with the requirement of Code Sections 604.6.1 and 604.6.1.1 *et al.*

Charge 13 - There is substantial evidence to sustain the Charge. It is uncontroverted that, on the date in question, there were three (3) compressed gas tanks on the Licensed Premises chained to each other on the floor and not properly secured. Drobenko's testimony that they were all in a standing-up position is inaccurate, irrelevant and self-serving. New York State Fire Code 3003.3 deals with the regulation of pressure release devices, in particular, requiring that pressure release devices shall be "arranged to discharge upward and unobstructed to open air in such a manner as to prevent any impingement of escaping gas upon the container, adjacent structures or personnel."

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I credit Stravalle's statement that the subject compressed gas tanks were not arranged upward and unobstructed to open air and, given their positioning on the floor and being chained to each other, there would appear to have been a risk of impingement, as stated in the cited section. Licensee witness Drobenko admitted that one (1) of the subject gas tanks was full. His testimony that they created no danger was clearly self-serving.

Charge 14 - There is substantial evidence to sustain the Charge. The testimony of various Authority witnesses established that there was a sign outside the Licensed Premises that reads "Cafe Tucano." Receipts for sales in the Licensed Premises obtained by Stravalle also showed the trade name "Cafe Tucano."

For all intents and purposes, Licensee witness Drobenko admitted that there was an intent on the part of the Licensee to use the trade name "Cafe Tucano." It is further undisputed that the Licensee never requested the Authority's permission to use this trade name, as supported by the license renewal materials in State Exhibits 8 and 9.

Charge 15 - There is substantial evidence to sustain the Charge. The Authority alleges that, on August 7, 2020, the Licensee violated Sections 118(1) and (3) of the Alcoholic Beverage Control Law (ABCL) by creating a sustained and continuing pattern of noise, disturbance, misconduct or disorder on or about the Licensed Premises, relating to the operation of the premises or the conduct of its patrons, which adversely affects the health, welfare or safety of the inhabitants of the area in which the Licensed Premises is located. Contrary to the argument of the Licensee's attorney in his closing argument, this is not a charge alleging that the Licensed Premises has been a focal point of police attention. Thus, the Licensee's closing statement arguments on the record regarding this Charge are inapposite.

Sections 118(1) and (3) of the ABCL allow the Authority to cancel, suspend or revoke a license for cause based on the forgoing conduct. To sustain this Charge, two (2) groups of substantial evidence must be established:

- (i) substantial evidence of the existence of a sustained and continuing pattern of noise, disturbance, misconduct or disorder on or about the Licensed Premises coming from its operation, conduct of patrons or both; and
- (ii) substantial evidence of adverse effect of any of these conditions on the health, welfare or safety of area inhabitants. Section 118(4) provides further that evidence of a sustained and continuing pattern of noise, etc., will be presumed sixth incident reported to the Authority by a law enforcement agency in any sixty (60)-day period.

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A continuing pattern of complaints by area inhabitants and the testimony of two (2) witnesses regarding a continuing pattern of excessive noise at licensed premises have been held as substantial evidence of Section 118(1) and (3) violations. MJS Sports Bar & Grill, Inc. v. New York State Liquor Authority, 129 AD 3rd 1368 [3rd Dept. 2015]; Jericho Pub v. New York State Liquor Authority, 4 AD 3d 228 [1st Dept. 2004]; Quintard Associates v. New York State Liquor Authority, 57 AD 2d 462 [4th Dept. 1977], appeal denied, 47 NY 2d 805; Kanker Restaurant v. Gazzara, 104 AD 2d 360 [2nd Dept. 1984]

The cogent and credible live testimonies of Authority witnesses Zitelli and Schreiber in combination with the affidavit testimonies of Bourassin and Uy established that there was a continuing pattern of noise emanating from the Licensed Premises for a long period of time, particularly during the July-to-September 2020 time frame. This loud noise was described variously as an incessant and unbearable throbbing beat, causing these complainants to lose sleep and interfering with their personal comfort and work life. Complaints were made on a regular basis to local authorities and complaints to the Licensee's management were reported to them, summarily dismissed or obstructed by not answering telephone calls.

Licensee witness Drobenko's testimony that there was not and never has been any noise issue and that neighbors have never complained strains credulity and bears little probative weight as it is, in my opinion, clearly self-serving. The more compelling evidence is that the Licensee simply disregarded them. Drobenko's speculative claim that other licensed premises surrounding the Licensed Premises could have caused the noise is equally incredible. There is no evidence in the record to support any such speculation and the live and affidavit testimony of the four (4) residential neighbors alone contravenes any such speculation.

The log of some thirty-five (35) 3-1-1 complaints, as detailed in State Exhibit 5, is challenged by Licensee witness Petrillo as meaningless since he claims that, as noted, the majority of them were noted to be unfounded and closed. Petrillo's credibility as Drobenko's is also vulnerable to attack as self-interested and incompetent and, in any event, is hearsay and questionably motivated since he likely received remuneration to testify. Both State Exhibits 20 and 21 substantiate the reporting of the 3-1-1 complaints, which establish this continuing pattern of noise and disturbance.

In any event, the incidence of 3-1-1 calls detailed in State Exhibit 5 in and of itself raises a presumption of a sustained and continuing pattern of noise related to the operation of the Licensed Premises since six (6) or more incidents were reported by a law enforcement agency within a sixty (60)-day period, per ABCL 118(4).

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However, even if, *arguendo*, the subject 3-1-1 report were to be disregarded, the creditable live and affidavit testimonies of the aforementioned four (4) residents alone constitute sufficient substantial evidence to sustain the Charge.

Charge 16 - There is not substantial evidence to sustain the Charge. Based on the testimonies of Stravalle and Drobenko, it remains unclear to me whether, in fact, the Licensee was employing security guard personnel at the Licensed Premises on the date in question. The focus of the Charge rests on the official status of Buenaventura Rodriguez. Stravalle considered him a security guard, while Drobenko stated that he was a duly licensed fire guard, whose certification, per Licensee Exhibit BB, expires on June 6, 2028. I credit Drobenko's testimony that the two (2) individuals at issue were not acting as security guards and the Licensee does not employ security guards and has no dealings with any third-party supplier of security guard personnel. Thus, he is not obligated to maintain a roster of same, as alleged.

Charge 17 - There is substantial evidence to sustain the Charge. Authority witnesses Stravalle, Zitelli and Schreiber all testified that they heard live DJ/disco-type music being played at the Licensed Premises and Stravalle saw what appeared to be a DJ station with an individual stationed there inside the Licensed Premises. I credit their testimonies.

Licensee witness Drobenko denies that there was any disco station and asserts that only a technician uses the station to adjust temperature and music. Again, Drobenko's testimony in this regard strains credibility and is self-serving.

Charge 20 - There is substantial evidence to sustain the Charge. As part of his investigation, Authority witness Stravalle checked corporate status records maintained by the New York State Department of State (NYSDS). He learned that, as confirmed by State Exhibits 6 and 6A, the NYSDS's records show that the Corporate Licensee, The Cloister East, Inc., was dissolved by Proclamation/Annulment of Authority on September 29, 1993. It, therefore, ceased to exist as a licensed entity and ceased to be operable as a bona fide premises, as charged.

In addition, the Authority's records show that the Licensee was licensed as a restaurant. During his inspection, Stravalle reviewed sales receipts for the Licensed Premises for the date in question and determined that the majority of the sales were for alcoholic drinks, not food, as documented in State Exhibit 14, thus undermining that status of the Licensee as a bona fide restaurant.

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Licensee witness Drobenko's testimony that he had no awareness that the Corporate Licensee was dissolved twenty-seven (27) years ago also strains credulity. By way of mitigation, however, he stated that his accountant is in the process of "straightening the situation out." Moreover, the arguments of the Licensee's attorney in his closing statement that the dissolution of the Corporate Licensee did not constitute a de facto loss of bona fide status since taxes were continued to be paid is unavailing. Tax payment records were presented only for 2018, 2019 and 2020 and it is uncontroverted that a warrant against the Licensee is outstanding for some one hundred forty-four thousand dollars (\$144,000) in unpaid taxes. Thus, it is questionable that taxes had been continuously paid since 1993.

He also denied that the receipts contained in State Exhibit 14 reflected only a portion of the sales for food items, but produced no evidence for the record to substantiate his contention.

Charge 21 - There is substantial evidence to sustain the Charge. As discussed in my opinion with regard to Charge 20 *supra*, Authority witness Stravalle learned as part of his Inspection, that the Corporate Licensee, The Cloister East, Inc., was dissolved by Proclamation/Annulment of Authority on September 29, 1993, contrary to the Licensee's attorney's argument. This dissolution clearly constituted a material change in facts, which the Licensee was obligated to report to the Authority and did not do so.

Additionally, Stravalle learned from the New York State Department of Taxation and Finance that judgment had been entered and a warrant was issued on October 24, 2019 against the Licensee for unpaid taxes in the amount of one hundred forty-one thousand, eight hundred four dollars and forty-four cents (\$141,804.44), as note in State Exhibit 7. This also constituted a material change in facts, which the Licensee was obligated to report to the Authority and did not do so.

Licensee witness Drobenko denied any knowledge of the dissolution or the taxes owed, claiming that he paid all federal, state and local taxes fully every year. I find that Drobenko's denial and assertion strain credulity and are clearly self-serving.

Charges 22 and 23 - There is substantial evidence to sustain these Charges. As discussed *supra*, the Corporate Licensee, The Cloister East, Inc., was dissolved by Proclamation/Annulment of Authority on September 29, 1993. In the Licensee's 2019-2021 and 2017-2018 renewal applications, documents in State Exhibits 8 and 9, Licensee witness Drobenko represented that he was a principal of the Licensed Corporation (along with others) and failed to indicate that the Corporate Licensee had been dissolved or that a tax warrant had been issued against the Corporate Licensee.

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I find that Drobenko's denial of any knowledge of the dissolution and/or warrant for taxes owed strains credulity and are clearly self-serving.

Charge 24 - There is substantial evidence to sustain the Charge. Rule 48.2 of the Rules of the State Liquor Authority requires that a licensee exercise adequate supervision over the conduct of the licensed business. This requirement entails that the Licensee "insure that a high degree of supervision is exercised over the conduct of the licensed business at all times" and that each licensee "will be held strictly accountable for all violations ..."

This standard of care imposed on a licensee is a high one. Becker. v. New York State Liquor Authority, 21 NY 2d 289 (1967) (Licensee is held to a high standard of care requiring exercise of reasonable supervision applying a knew or should have known standard with respect to a failure to exercise this standard of care); 152 AD 2d 518 (2nd Dept. 1989).

As previously stated, this Charge is, by its nature, an overarching Charge encompassing all Findings of Fact for all Charges alleged. As more fully discussed *supra*, the Licensee has failed to exercise adequate supervision in a number of ways, including, but not limited to, not complying with COVID-19 operational restrictions, not complying with standards set by various administrative codes, failing to notify the Authority of changes in corporate status affecting the bona fide premises standing of the licensed business and creating a continuous noise nuisance that adversely affected the health, welfare and/or safety of area inhabitants.

In light of all the substantial evidence compiled in the Findings of Fact supported by the State Exhibits, Licensee witness Drobenko's denial that he failed to exercise adequate supervision is not credible, especially in view of the fact that, as demonstrated by the video/audio recording contained in State Exhibit 23, Drobenko sat with Stravalle at the conclusion of the Inspection, discussed and acknowledged all the cited violations. By way of mitigation, Drobenko cooperated with Stravalle's Inspection, discussed all the alleged violations with him and agreed to make corrections.

CONCLUSION

- Charge 1: The Charge is sustained.
- Charge 2: The Charge is sustained.
- Charge 3: The Charge is not sustained.
- Charge 4: The Charge is not sustained.
- Charge 5: The Charge is sustained.

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- Charge 6: The Charge is not sustained.
- Charge 7: The Charge is sustained.
- Charge 8: The Charge is not sustained.
- Charge 9: The Charge was withdrawn by the Authority.
- Charge 10: The Charge is sustained.
- Charge 11: This Charge is duplicative of Charge 6.
- Charge 12: The Charge is not sustained.
- Charge 13: The Charge is sustained.
- Charge 14: The Charge is sustained.
- Charge 15: The Charge is sustained.
- Charge 16: The Charge is not sustained.
- Charge 17: The Charge is sustained.
- Charge 18: The Charge is sustained.
- Charge 19: The Charge is sustained.
- Charge 20: The Charge is sustained.
- Charge 21: The Charge is sustained.
- Charge 22: The Charge is sustained.
- Charge 23: The Charge is sustained.
- Charge 24: The Charge is sustained.

Dated: December 1, 2020

Nicholas DeCesare
Nicholas DeCesare
Administrative Law Judge