

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARING**LICENSE COMMISSION BOARD MEMBERS:**

Michael Gardner, Commissioner
Robert Haas, Commissioner
Gerald R. Reardon, Fire Chief

STAFF: Ellen Watson

AT: Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139

DATE: Tuesday, January 11, 2011

TIME: 6:00 p.m.

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INDEX OF AGENDA PROCEEDINGS

<u>AGENDA MATTERS</u>	<u>PAGE</u>
DISCIPLINARY: Jaswinder, Inc.	5
REVOCAATION: New Asia in Cambridge, Inc.	42
APPLICATION: Grafton, Inc. d/b/a Red Line Bar & Grill	64
APPLICATION: Moksa, LLC	86
APPLICATION: Naka Enterprises, Inc. d/b/a The Snack Bar	108
APPLICATION: Muqueca Restaurant Inc., d/b/a BOM Cafe	115
APPLICATION: Cakewalk Bakers, LLC d/b/a Flour Bakery & Cafe	120
APPLICATION: Realty Associates-Iowa d/b/a 2 Canal Park	130
APPLICATION: Northeast Business Group, Inc. d/b/a The Maharaja	136
APPLICATION: Two Guys Foods, Inc. d/b/a Burger King	181
RATIFICATIONS	188

P R O C E E D I N G S

MS. WATSON: Good evening. This is the License Commission general meeting on Tuesday, January 11, 2011. It is 6:01 p.m. We are in the Michael J. Lombardi Municipal Building at 831 Massachusetts Avenue in the basement conference room.

Please silence all electronics.

Before you tonight are, in the middle, Commissioner Michael Gardner, to his right is Police Commissioner Robert Haas and to his left, Fire Chief Gerald Riordan.

The first matter of business is to ratify the minutes from the November 9, 2010 meeting, and for that we'll call up Superintendent Chris Burke.

CHRIS BURKE: Here. Present.

MICHAEL GARDNER: So, as I understand it, in the meeting of November 9, it was you, Chief, and you, Superintendent

Burke, who were present representing the License Commission?

CHRIS BURKE: The 9th or the 4th?

MICHAEL GARDNER: 9th.

MS. WATSON: I thought it was the 9th.

MICHAEL GARDNER: 4th was a Thursday. I thought the meeting was the 9th.

CHRIS BURKE: I stand corrected.

MS. WATSON: It had the 9th on the agenda.

MICHAEL GARDNER: So we are here to approve those minutes if they are ready to be approved?

MS. WATSON: They are.

CHRIS BURKE: Yes.

GERALD REARDON: I make a motion we approve the minutes as submitted.

CHRIS BURKE: I second the motion.

GERALD REARDON: All in favor?

CHRIS BURKE: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: Thanks very much.

I don't think you have any other
business here.

CHRIS BURKE: No, not today.

Thanks.

GERALD REARDON: You sure,
Superintendent, I can find something for you.

CHRIS BURKE: I'm sure you could.

DISCIPLINARY: JASWINDER, INC. d/b/a CAFE OF
INDIA:

MS. WATSON: Moving on. The first
matter of business tonight is a disciplinary
matter for Jaswinder, Inc. doing business of
Cafe of India, Rashpal Singh, manager, holder
of an all alcoholic beverages as a restaurant
license 52A-52B Brattle Street due to a

report received by the License Commission from the Fire Department. The report stated that the Fire Department closed Cafe of India on November 3, 2010 for an extended period due to numerous fire hazards.

MR. GOLDBERG: William Goldberg representing Jaswinder, Inc. The manager, I notified him. There's a reason why he's not here. I think I can report for them as well.

MICHAEL GARDNER: I understand we have a representative from the Fire Department here as well; is that right?

GERALD REARDON: If counsel would like to do an entrance or opening, that's fine, and then we'll hear from Captain Cahill.

MR. GOLDBERG: Does he want to?

GERALD REARDON: Do you want to do an opening before?

MR. GOLDBERG: No. I'll wait for

him to report.

GERALD REARDON: Okay. Captain?

MICHAEL GARDNER: It would be helpful for us, sir, if you could, of course, state your name for the record and then tell us about your involvement with this matter and your findings.

CAPTAIN CAHILL: Captain Tom Cahill, Cambridge Fire Department.

I was notified on November -- October 31 of an incident of Cafe of India that involved an odor of gas and having two victims burnt that had to be transported to the hospital. I followed up the second day to determine what the cause of the problem might've been. I met with a number of people that said they represented the owner. We had some conversations as to what we needed to do to remedy these problems, and I gave him a couple days to take care of that.

We agreed that on 11/3, November 3rd, that we would go back and see where we stood and if they made any steps towards remedying the problems.

On November 3, we went back, and it was determined that no progress had been made, and it didn't appear to me that much effort had been put into what we deemed were significant fire safety problems.

At that time, we cited them for three different fire code violations, and at that point shut the restaurant down until these fire code violations were resolved.

MICHAEL GARDNER: And that occurred when?

CAPTAIN CAHILL: That was November 3, 2010.

MICHAEL GARDNER: Were those problems resolved?

CAPTAIN CAHILL: The problems were

resolved November 10th.

MICHAEL GARDNER: And were they permitted to reopen at that time?

CAPTAIN CAHILL: At that time.

MICHAEL GARDNER: I understand there have been a number of other incidents at this restaurant over time, are you familiar with those?

CAPTAIN CAHILL: Yes, sir. I went back approximately a year and there were five different incidents, one of them was a structure fire, which occurred on 12/30/2009, electrical problems on March 23 of 2010. We had the gas problem on 10/31.

MR. GOLDBERG: What year?

CAPTAIN CAHILL: 2010. And since that time -- I don't have a lot of documentation on it -- I'm sorry. I don't have the date in front of me. But those are the three or four significant incidents

within the past year of the fire investigation.

MICHAEL GARDNER: Ms. Watson, in the record are there issues from earlier and any previous hearing and conditional license granted in this case?

MS. WATSON: Yes. We have documentation that there was an issue in May of 2003, January of 2008, December of 2009, and there was a License Commission hearing in March of 2010 where conditions were attached to the license concerning the Fire Department.

Regarding safety, March 4, 2010, the Board voted three to zero to add the following conditions to the license: (1) clean the hood duct system. It's to be done four times a year, or more frequently if deemed necessary by the Fire Department with the report provided to the Fire Department by

the licensee; (2) task force will go to your establishment every six months; (3) Fire Department must approve and sign-off any work that has been done at the establishment; and (4) you will be brought back before the License Commission for another hearing should you fail to comply with any of these conditions.

And they had a right to appeal to the ABC within five days and they did not.

MICHAEL GARDNER: So, I'm not sure I did the math right, but it sounds like from the March 2010 hearing and the conditions, they should've cleaned the ducts at least twice in that time period before the end of October.

I'm wondering whether your inspection, Captain, showed any evidence, one way or the other, with respect to the ducts had been cleaned according to the

requirements.

CAPTAIN CAHILL: Whether the ducts had been cleaned, we don't know. We do know that they had been inspected by a cleaning company who, at the time, determined they were noncompliant with the current codes. And at that time they had six months to rectify that situation. And that had not been done at the date of the license incident of 11/3.

MICHAEL GARDNER: Was that within or beyond the six-month --

CAPTAIN CAHILL: Beyond.

MICHAEL GARDNER: Sir?

MR. GOLDBERG: Please. I'm looking at the report of March 5, and what has to be done to comply, and whether or not Captain Cahill had made inspection of the Ansu1 system, which was basically the reason for the standards that were set by the License

Commission. And parenthetically, the reason for the ambulance and the Fire Department to come to the restaurant was not because of a failure of -- a mechanic failure of the Ansul system. It was because of an injury to one of the chefs who was cleaning the stove with an oil that flared up, and I think that Captain Cahill was informed about that.

The ambulance was called by the personnel at the restaurant. Not only did the ambulance respond, but the Health Department and the Fire Department responded.

So that with regard to the requirement of the cleaning of the duct hood, the fire was not a cause -- was not caused by the Ansul system being overloaded or dirty, it was because of an act by the chef in setting up the stoves.

Secondly --and I do have here a report from the company that was doing the

hood system and duct system, cleaning it and they did abide by the order of the -- of March 3rd. Ace Fire Protection was down on September 26, 2010 to do a fan belt repair and do hood cleaning. I don't know whether or not Captain Cahill was shown that.

I've talked with my people, and ACE Protection may not have tagged the Ansul system properly as was supposed to have been done. And now there's a new person who has taken over the job.

But what I'm saying is, in compliance with the order of March 5, Jaswinder, Inc. did comply, and in the copy that I have here, it shows that it was cleaned on 9/26 and there didn't have to be another cleaning until three months after that. So there was compliance and there was a hood cleaning.

And I'll ask the Captain, when you

came back to the restaurant and you made your inspection, you didn't make an inspection when you first came to the restaurant as a result of notice to you of the fire at the restaurant; is that correct?

CAPTAIN CAHILL: Yes, sir.

MR. GOLDBERG: And three days later, would you inform them that the restaurant was open at that time, was it not?

CAPTAIN CAHILL: Yes, sir.

MR. GOLDBERG: Do you know of your own knowledge whether the Board of Health, the plumbing and Inspectional Services came down and gave the owners of the restaurant permission to open up the restaurant?

CAPTAIN CAHILL: I don't know that.

MR. GOLDBERG: You don't know that. But when you came back on a later date, the restaurant was, in fact, open?

CAPTAIN CAHILL: Yes.

MICHAEL GARDNER: I'm sorry. I'm confused. The later date, what are you talking about, the 3rd or the 10th?

MR. GOLDBERG: He responded to the initial fire call and the ambulance call.

MICHAEL GARDNER: That would have been October 31?

MR. GOLDBERG: That's correct. At a later point in time, he came back on November 3rd. I don't know -- and at that time he came October 31st, he gave them instructions, you had to do this and do that.

When he came back on October 3, that's when he made an inspection that the Ansu1 system was dirty.

MICHAEL GARDNER: That would have been November 3?

MR. GOLDBERG: November 3. I'm sorry on my dates.

GERALD REARDON: Are we talking,

counsel, two different systems, an Ansul system for extinguishment and a hood system, that's two different systems?

MR. GOLDBERG: The exhaust system is corollary with the duct system as well.

GERALD REARDON: No. They are two separate -- they are tied together, but they are two separate entities.

MR. GOLDBERG: Well, the hood cleaning, that's what he made a comment with regard to hood cleaning, that it was dirty, and I'm suggesting -- and I'll show you this document -- that it says on September 26, there was a hood cleaning.

MICHAEL GARDNER: I'm not sure I understand how that's complaint with the original order to clean the system four times a year. That certainly is -- that's beyond the three months from the March date of the order, is it not? Was there a prior --

MR. GOLDBERG: There was one inbetween, and this was the second one.

MICHAEL GARDNER: Okay.

MR. GOLDBERG: They said within four months there, was one prior to that time, and then this was one before the occurrence.

GERALD REARDON: Do you have any documentation of that?

MR. GOLDBERG: Right here, sir.

GERALD REARDON: That's for both cleanings?

MR. GOLDBERG: It says the cleaning, yes.

GERALD REARDON: Both times?

MR. GOLDBERG: I'm not sure what you mean by "both times."

GERALD REARDON: If you start in March and you had to do it --

MR. GOLDBERG: No, I don't have that. This is the one --

MICHAEL GARDNER: But I understand you represented to us there was a cleaning between March and September. What I'm asking is if you know the date of that, or if you have any documentation to support that?

MR. GOLDBERG: I don't have that. I think the -- as a matter of fact, I think one of the orders made was that the notice of the cleaning was to be made to the Fire Department and I don't know whether or not they have received that.

MICHAEL GARDNER: We can ask the captain.

Did you receive any notices of cleanings between March and November?

CAPTAIN CAHILL: No, sir. The only notification I received was a termination of contract from that vendor that you have here in your hand.

And if I may, could I go back a

little bit?

When the Fire Department responded on -- I'm sorry with my dates -- when the Fire Department responded on the 31st of October, it was determined by Inspectional Services, Inspector Nicorollo (phonetic) as well as NStar gas and the deputy chief on scene what they felt the increase in the flame was due to heavy grease buildup on the gas regulators behind the appliances which they deemed adversely affected their performance.

We are talking two different systems, we are talking about a suppress system and hood system. Both systems were noncompliant. They were both tagged noncompliant by the vendor.

We have pictures of the noncompliant tags which were taken on November 3rd.

So even though -- even though they

may have had their cleaning, they were still deemed noncompliant, and they were required under NFPA 96 to have these issues resolved within six months. So within six months they didn't have these issues resolved, we had the excessive grease buildup. I don't have documentation of a cleaning in between what this gentleman provided and where we are -- where we were on November 10 when the new company took over and they did go in there and they brought that -- they brought the Ansul system and hood system to a compliance state which is where we are right now.

ROBERT HAAS: It is a new vendor beyond this Ace Company?

CAPTAIN CAHILL: Yes, sir.

MICHAEL GARDNER: Are there other things we should know, sir?

MR. GOLDBERG: Well, the report that he -- that Captain Cahill is reporting was

that a report made on March 3 of 2010 or was that made subsequent to the incident that occurred October 31?

CAPTAIN CAHILL: 10/31/2010 there was the gas incident in which the two employees were transported to the hospital.

MR. GOLDBERG: Of this year?

CAPTAIN CAHILL: Yes.

MR. GOLDBERG: And it wasn't a gas incident, was it, is that how they described it? When did they come to make that conclusion?

CAPTAIN CAHILL: The gas company, Inspectional Services, Inspector Nicorollo and the deputy chief on scene that night came to that determination.

MR. GOLDBERG: Did they make any decision with regard to the closing of the restaurant?

CAPTAIN CAHILL: I don't know that.

MR. GOLDBERG: But you know, in fact, that the restaurant did open prior to your coming back on November 3.

CAPTAIN CAHILL: It was opened when I arrived.

MICHAEL GARDNER: Do you happen to know, Captain, the date the machinery was tagged as noncompliant?

CAPTAIN CAHILL: I don't think I can make it out. These pictures I have are the thumbnails. I have the actual photographs. But I did take a photo of the noncompliant sticker on the hood system as well the noncompliant sticker on the Ansul system.

MICHAEL GARDNER: Do you have any information about that, sir?

MR. GOLDBERG: Well, I don't, but I think that what -- frankly, Ace Fire Protection was hired to not only clean, but to comply, and that was one of the reasons

why Ace Fire Protection no longer services the restaurant for the requirements of the License Commission concerning all of its systems, so I don't think they changed the tags. They were irresponsible. I'm not saying my clients should not have observed it or make an attempt to observe it, but these are things that they hire somebody to do and if it was noncompliant, it wasn't because of my client's nonperformance, it was because of the Ace Fire Protection nonconforming.

GERALD REARDON: Counselor, we have had five fires in the last two years all relating to Ansul and hood system at that establishment, that's the reason for the review and this is not an acceptable rate for anyone. The laws on hoods and extinguishing systems changed a year ago, that's a state mandate. It requires that a hood cleaning company come in who is certified by the state

fire marshal to issue such a sticker and that's when we inspect for, and during the previous times since the last issue here with the License Commission, the licensee's responsibilities, as you are well aware, to make any report to the Fire Department and not to subrogate it to a contractor.

MR. GOLDBERG: I'm not saying that their action was justified. I'm saying that there was a reliance.

What -- I think that they felt that they had done everything properly when the Health Department came down, the Building Department came down and allowed them to open until Captain Cahill came down and shut them down until there's compliance. There's full compliance now. There's a new purveyor, and I understand the significance of the March 3 decision, I understand the background, the foundation of everything that's happened. I

think that we -- when Captain Cahill came back and made his observations, we found there were noncompliance and shut them down for seven days, I think that maybe I'm suggesting, not recommending, but I'm suggesting that where they are in compliance now that shut-down for seven days may be ample penalty for --

GERALD REARDON: Well, you understand that my job is to make sure that everybody in the City, to the best of -- is safe, and that's the crux of this issue right now, that, you know, that whatever happens there, we have had a number of fires, five to be exact, which extremely is over the top.

And we need some sort of, you know, assurances this is not going to continue. They are in compliance now. They have to stay in compliance. We can't send inspectors out constantly to have a burden to provide

that in timely fashion, quarterly, whether it means bringing in a person or not, because, you know, as far as I'm concerned, one more incident, and that's it. I'm going to recommend they terminate their license because we just can't have this continue.

No disparaging remarks about their owners or their intentions or anything else, but the facts are that has happened. So, that's where you are at convincing me on where we go forward from this point.

MICHAEL GARDNER: It is my understanding, sir, that the owner and manager is not here tonight.

MR. GOLDBERG: Let me take a look around the audience.

Bernard, is Jaswinder here?

AUDIENCE MEMBER BERNARD: No.

MICHAEL GARDNER: I guess I'd ask is there a reason why in a matter as serious as

this, the persons responsible for the operation of the premises aren't here to explain their actions to us?

MR. GOLDBERG: I had spoken with the principal of the business and they said the manager, Rashpal Singh, was going to be here. And he said: "What time?"

I said, "6:00. We are the first on the list."

GERALD REARDON: Counselor, I have to tell you that this is pretty consistent of what we have been dealing with with the establishment.

CAPTAIN CAHILL: If I may?

GERALD REARDON: Yes.

CAPTAIN CAHILL: On March 5, when it was determined that the hood and duct system needed to be cleaned four times a year, that's by a professional cleaning company, and that's what there's a receipt of that had

been done outside of that quarterly window. It is still the responsibility of the business owner to make sure that the place is clean of grease on the outside and that's what is not occurring. These guys are coming in, according to your paperwork, and getting inside the duct work and that's what they are required to do.

The problems that we found were the excessive grease buildup literally dripping off the hood systems when I arrived on November 3, and that's what -- 15, 20 pictures of that, and that's not what the hood cleaning company is there to do. That's the responsibility of the business owner.

ROBERT HAAS: I ask just to clarify, you mentioned there were three fire code violations. You cited them on November 3rd. Describe to me what those violations were.

CAPTAIN CAHILL: Yes, sir. The

first one was failure to abate dangerous or unsafe conditions and that fell in line with the grease buildup, and, again, the grease buildup was what I had determined to be excessive where you weren't able to walk underneath the hood without the grease dripping on you.

When I walked in, what I had put in my report is that the flames were approximately 18 to 24 inches high. They were licking this hood system.

And that's when we shut the gas off to that appliance and noticed the grease buildup which is outside of the duct work that this company is responsible for.

The second one was failure to maintain the kitchen fire suppression system and that, again, is the Ansul system the chief talked about that had expired.

And the third one was failure to

install and maintain fire extinguishers, and the reason I put that on there, there were five locations where it was indicated there were fire extinguishers and there was one on the premises. And when I asked where the extinguisher was for Location B, he went to Location A and took and moved it to Location B, and I think he thought it was in jest, but it was serious enough that I felt to put it on the citation. If it is clearly marked as a fire extinguisher, it should be there, the fire extinguisher should be there.

MR. GOLDBERG: How many were there? Actually there's supposed to be four and --

CAPTAIN CAHILL: He marked for five and there's two.

ROBERT HAAS: Captain, those stickers that verify compliance or noncompliance, are they dated?

CAPTAIN CAHILL: Yes, sir.

ROBERT HAAS: But I would ask you to produce those photographs so we can actually see the dates for our records as to what the dates are.

CAPTAIN CAHILL: Okay. I can do that. We have the noncompliance on the hood and the noncompliance on the Ansul system. Both of those I have the photos of it.

ROBERT HAAS: I would like to see those. My understanding was that upon the inspection of the fire or the hoods, they were to notify the Fire Department?

MS. WATSON: They were to produce the record to the Fire Department, yes.

ROBERT HAAS: Captain, your testimony is that they haven't produced any records, to your knowledge, for the last two fire inspections?

CAPTAIN CAHILL: No, sir. The only thing produced to me was the new contract

from Ace Fire and Safety.

ROBERT HAAS: Do you know why the services for Ace was terminated?

CAPTAIN CAHILL: I can't speak for Ace. Ace had terminated their contract.

ROBERT HAAS: Ace terminated their own contract or the vendor?

CAPTAIN CAHILL: The owner of Ace told me he terminated the contract with Cafe of India. I know there were up two other vendors that were called in that spoke with me. I told them what the requirements were and they chose not to take the contract.

Eventually on November 9th Ace assumed the contract and they brought both systems into compliance.

MR. GOLDBERG: The note I see on the Ace Fire Protection indicates date sent to Fire Department was November 4th.

MR. GOLDBERG: So they are in

compliance November 4th, nonetheless they were shut down from that day.

CAPTAIN CAHILL: No, sir. They were not in compliance.

MR. GOLDBERG: From this.

CAPTAIN CAHILL: They were not in compliance until November 10.

ROBERT HAAS: Mr. Goldberg, the invoice I'm reading from doesn't talk about any kind of compliance other than the fact that it's an invoice for the work they performed and the charge they charged.

MR. GOLDBERG: It may have been misinterpreted. What I'm saying is that the date it was sent to the Fire Department was November 4th.

ROBERT HAAS: Unless I'm wrong, I don't see a certification that they are in compliance on that form that you produced.

MR. GOLDBERG: No. This is the new

company that came in and did what was suggested by Captain Cahill.

CAPTAIN CAHILL: Not on November 4, sir.

MR. GOLDBERG: Well, what I'm saying is that this was work that was done by this company and the report was sent to the Fire Department.

MICHAEL GARDNER: If the record shows, Ms. Watson, could you tell us what in terms of the conditions that were placed on the license in March, was there a determination by the License Commission as to what should happen if those conditions were not met? For March.

MS. WATSON: It just says to add the following conditions. So it would be like any other conditions that are broken, they would come up for a hearing.

ROBERT HAAS: Mr. Chair, just to

clarify, because I was hear during when we set those conditions, there was a great deal of concern with the neighboring establishments over the four -- at the time four fire incidents, and they wanted some assurances that there was going to be sufficient safeguards in place, that they weren't going to be concerned about fire hazards for themselves and their employees and that's when we imposed the additional conditions with the frequency.

We were also, I think, pretty clear that if we found the condition warranted more frequent cleaning, we would revisit that issue.

MR. GOLDBERG: That's correct.

MICHAEL GARDNER: Are there any members of the audience who like to be heard on this issue?

(No response.)

MICHAEL GARDNER: Hearing none --

ROBERT HAAS: Mr. Chair, I would like to make a motion that we take the matter under advisement and to review further documentation to be provided by both the applicant and the Fire Department and I do want to see those certificates and dates. And if you can provide additional documentation relative to the inspection from March 4 on, I would like to see those as well.

MR. GOLDBERG: That's when the review would be on March 4th?

ROBERT HAAS: Well, that's when we establish the conditions. I would assume that after we establish the condition, there would have been an inspection, right, an inspection and compliance certificate, and then the next one would have been the September one that was done. So, I would

I like to see that documentation as well.

So, if you could produce that, Mr. Goldberg, prior to our decision hearing that would be helpful.

MR. GOLDBERG: I'll do my best.

CAPTAIN CAHILL: That document the attorney is referring to it's -- it says a noncompliant was sent to the Fire Department on 3/26/10, so that answers your question, which the photographs will also document that it was 3/26/10 when they were notified that their system was noncompliant.

MICHAEL GARDNER: There was no change in that prior to your inspection in November?

CAPTAIN CAHILL: No, sir. And so they had six months from that time to get compliant and they had not done that, and then subsequently, there was another incident.

MICHAEL GARDNER: This seems very serious, sir.

MR. GOLDBERG: Oh, I understand. I'm not privy to that March 10 report that the captain is referring to about the noncompliance.

It would just appear to me that if we look at the March 5 decision by the License Commission, and then there was noncompliance shortly thereafter, that it would've been brought before the License Commission much sooner than what we are hearing today.

So, I don't have -- I didn't have access to those record, I would like, perhaps, at some point in time to talk with Captain Cahill and get those reports so I'll be sorta brought up to date on them. But my premise is that if they were not in noncompliance before, the Fire Department

should have brought them before the License Commission much sooner than before today.

MICHAEL GARDNER: I think now you are saying it's our fault.

MR. GOLDBERG: No, no, no. No.

MICHAEL GARDNER: There's a motion made and I'll ask --

MR. GOLDBERG: You drew that conclusion and I'm saying you are not at fault.

I never in, all my hearings before this Commission, have ever castigated the Department for doing what they believe their duty to be, so that if I made the comment, it was only was an inference that if there was a noncompliance sometime before, that should have been brought before the License Commission before we are here today. That's all. No blame --

MICHAEL GARDNER: The fact that the

responsibility was on the Fire Department as opposed to the operator is what I understood your statement to be.

MR. GOLDBERG: No, no. They get a report, Commissioner. And it is up to them to do what they think they should do. That's my only comment. No blame is at the Fire Department, the Police Department, the chairman or anyone associated with the License Commission.

MICHAEL GARDNER: There is a motion, is there, to defer the matter?

GERALD REARDON: Yes.

MICHAEL GARDNER: Motion, second. All those in favor signify by saying "aye."

ROBERT HAAS: Aye.

MICHAEL GARDNER: Opposed? None.

MR. GOLDBERG: Thank you.

MICHAEL GARDNER: Thank you very much, Council.

MS. WATSON: I've been requested to announce that if you're here for the Central Square Theater hearing or La Creperie, both of those are off tonight's agenda, so those are not going to be heard for tonight.

Central Square Theater has been continued to January 25th, and La Creperie has been withdrawn.

REVOCATION: NEW ASIA IN CAMBRIDGE, INC.

The next item is a revocation for New Asia in Cambridge, Inc., doing business as New Asia Restaurant, Sally Loh, manager, holder of a wine and malt beverage as a restaurant license at 1105 Massachusetts Avenue due to failing to properly apply to hold said license in inactive license status. There's also an outstanding balance owed to the city by New Asia.

Come forward, Sally.

MICHAEL GARDNER: Good evening. It would be helpful if you state your name and affiliation for the record.

SALLY LOH: Sally Loh, I'm owner of the New Asia Restaurant. I just send the City the check today. I wonder if you have received it.

MS. WATSON: Well, we've received the payment for last year, but we didn't receive this year's payment.

SALLY LOH: I haven't got anything from you for this year.

MS. WATSON: We mailed that out in December, we mailed it to 326 Somerville Avenue.

SALLY LOH: I send out paper saying I would like to renew the license, but I haven't got bill from you. If you -- I can pay you tomorrow.

MS. WATSON: Well, first of all, you know that it's always due in the month of December.

SALLY LOH: I know that because I -- sometime in month, I applied for inactive license and somehow I haven't received a letter, so I don't know what is the status of the thing and try to call you.

Unfortunately, you are not there most of the time. I understand you are not there.

MS. WATSON: I'm there all the time just about.

SALLY LOH: You know, the day I send in the application, I asked for you, too, you are not there. That's the day after the Thanksgiving. I -- sometime I'm not understand what my status is. I have a fire. I have a fire. I just hear this fire chief say I have the fire, damage my exhaust

system, and you can see I'm in a poor condition, but the landlord won't fix for me.

A lot of oil kinda melt in the -- so I know I cannot open. I don't want to endanger anybody's life and I do have a lease, but the landlord say if I happen to have a fire, he should pay my -- stop the rent and fix the place. The thing is not legally built. It's screwed together -- some part of them are screwed and glued together. So when the fire happened, actually I was there, I know -- I used extinguisher try to control the fire. I don't want it to become a lot of fire to damage the building. I'm in a hierarchy building.

At the time of the fire happen, I have no -- one of the alarm was broken. I tried to call the landlord a long time. They won't fix it.

So I'm in that situation. I try to

help and I did control the fire so much -- the kinda exhaust system we have, I try to help.

So I have applied for the landlord. At first I want to fix it because I don't know so much. I have been the -- I have been a tenant for a long time. They never answer a letter. Phone call they say "Yes, yes, we coming," but will not come. So I have experience. I have to probably do it myself. I want to do it and then they won't even approve my drawing.

MICHAEL GARDNER: A couple of questions, ma'am. How long have you been doing business there, when was the fire and the status of any fire insurance to take care of it?

SALLY LOH: I have been there almost ten years. Every six months we our regular record people to come to clean it. They do a

good job or not good job. I don't know. I do clean it if I see it a little bit dirty more than I want, I clean it more before the six months is expired. I do my part.

I never go into the ceiling to see how the duct work is until recently have so many fire happen, so I am a little scared because we are in the basement, the ceiling is a little bit low. It is very important. This small fire happen, we will not find if the duct work is not working there, so...

MICHAEL GARDNER: When was the fire, ma'am?

SALLY LOH: The fire was in February 1st.

MICHAEL GARDNER: Of 2010?

SALLY LOH: 2009.

MICHAEL GARDNER: Of 2009.

SALLY LOH: I have been trying to fight the lease because we invest money in

the premises. Maybe I cannot do business there. I should have a right to sell it, just as the liquor license if I lost my lease, I cannot get it back. I should have the right to sell my license.

And -- the letter sent to me -- somehow I have to say I really -- I like my Cambridge City foreperson, they are really, really nice person and try to help.

I didn't know anything about an inactive license can be applied, a whole inactive license. Actually at City Hall they send me a letter, I know it and I go there and I try to apply. I verbally get a date, but at the same time, I am fighting with my lease under a lot of pressure. And I remember they got me a date, so I called the City to find out what day is the hearing. I have a hearing on August 18th -- August 16th, but I call August 17th, so it is past. So I

don't know. I think, okay, maybe I lost my license. I don't know the law.

But then I received the letter a few days ago. The letter was sent to me dated December the 7th, but I just got it January the 6th.

MICHAEL GARDNER: Okay. Thank you.

Is it your intent to pay the full fees that are owed for the license.

SALLY LOH: Yes, of course, yes.

MICHAEL GARDNER: And is it your intent then to try to reopen the business here or --

SALLY LOH: I don't get my lease yet. So I have to find my lease. I have a court date on March, so probably -- I don't know what's going on. At least I can resell my license and get some money and recover for my loss.

ROBERT HAAS: So, is it your intent

to sell the license or to try to reestablish your business?

SALLY LOH: I want to reestablish, but I am one of the party try to -- the landlord, everybody have to help, right? So if I lost the lease, couldn't fight it, it takes too long to fight it, I have to sell it. I think you will not let me keep for years to fight for my lease.

GERALD REARDON: Can we ask --

SALLY LOH: So I have know under the circumstance.

Besides the fire, they have a lot of serious water problem. I have a water bath on March, water bath on -- two times and then on July. So that place have a lot of problem. I hope -- I try to keep it. I want to fix it myself, but I don't want any people to go in and damage the whole building. So I think I will sell --

ROBERT HAAS: To help you with your decision, typically the License Commission does not hold a license inactive for more than 48 months and you're --

SALLY LOH: For many -- how long?

ROBERT HAAS: 48, two years.

SALLY LOH: Two years, okay. So you --

MS. WATSON: Four years.

ROBERT HAAS: I'm sorry, four years. So you have --

SALLY LOH: Oh, four years, that long.

ROBERT HAAS: That's the normal practice, but the problem is it generally comes up for a six-month review, so it means you have to keep coming back to reapply for active status.

So, I'm saying to you is what you need to think about is if you are thinking

about selling your license, if you can again maintain it an inactive status, that should help guide you in terms of thinking about what you want to do, do you want to try to reestablish your business, or do you want to put your license on the market if you can keep the license, but now, clearly you got to fulfill your obligation in terms of paying your license fees in order to keep it at that status, and this body is now going to make a decision whether or not it is going to grant you an extension of your inactive status, meaning we have to take a vote.

SALLY LOH: So I have every six months --

ROBERT HAAS: Well, no, no. Typically, it won't go beyond four to eight months. So we're saying to you is you've already exhausted about 24 months of that 48-month period, and this body hasn't voted

as to whether or not to extend your inactive status.

So, what I suggest you need to do is think about whether or not you want to bring your fees to a current status and then come back to us and ask us to consider holding your license in active status for another six months, but you have to show some progress in terms -- and let us know what you are going to do with the license because that predicates or helps us think about whether or not we are going to grant that. And then in six months, you have to make some decisions about what you want to do with that license eventually.

MS. WATSON: That's never actually gone into inactive status. She never came in for a hearing --

ROBERT HAAS: I'm looking at the --

MS. WATSON: She has been closed two

years without --

SALLY LOH: No, I close to a year.

MS. WATSON: She has never come in
for a --

ROBERT HAAS: We have never pulled
the license yet, right?

MS. WATSON: Huh?

ROBERT HASS: We've never pulled the
license at this point in time or revoked or
suspended?

MS. WATSON: Because she didn't come
for the hearing --

SALLY LOH: I didn't come to the
hearing because I -- then I go back and
wanted to get it and --

GERALD REARDON: That was last
August.

MICHAEL GARDNER: That's when you
missed the date?

MS. WATSON: Right. And --

SALLY LOH: Yeah, I missed the date. I didn't get my written notice.

MICHAEL GARDNER: Are you in a position to be able to meet with Ms. Wattson or members of the staff within the next -- this week and bring your current license fees up to date --

SALLY LOH: Yes.

MICHAEL GARDNER: -- which would be -- would this be the 2011 fee?

MS. WATSON: It would be the first payment for 2011, which would be \$1,000 and then \$175 to apply for an inactive status.

We need to get you back in here for a hearing on that. We have to advertise it.

MICHAEL GARDNER: I guess before we make any decision, should I ask and see if there's anybody in the audience who would like to be heard on this?

KEN REEVES: Good evening. Ken

Reeves from the City Council. I didn't really come to testify about this, and I haven't met Ms. Loh before. I am familiar with, I think, your daughter and son-in-law.

This has have been a very complex matter because her actual landlord has been in question because that landlord was engaged in trying to sell the building to MIT and to Four City to develop the all Asia block. So, she's really been -- she hasn't been able to find out who she's to deal with and they have not done any repairs or anything at the site.

So, the subtext is really important, so I'm glad I was here to know this.

The most important I want to say, though, I'm chairing, as a member of the City Council, the mayor's Red Ribbon Commission on --

(Discussion off the record.)

KEN REEVES: New Asia. I'm going

sit back down, but I would like to ask you at the conclusion of this case if I could be heard out of the order on one other matter so I can vamoose. Thank you. Sorry, dear.

MICHAEL GARDNER: Thank you, sir.

If it pleases the Commission that we would ask you to make arrangements to meet with Ms. Watson this week. There's a skeleton staff tomorrow, so I don't know who will be here. She's be in.

MS. WATSON: I'll be here.

MICHAEL GARDNER: You should both bring your first six months of your 2011 license up to date and to, if you so choose to, file the application for the -- to go on inactive status and then we can hear that matter at a later meeting of the Board of the Commission.

SALLY LOH: Yeah, thank you.

MR. GARDNER: Is that satisfactory

solution for all the members?

ROBERT HAAS: So Mr. Chairman, what I would suggest is that we'd ask Ms. Watson to report back by our decision hearing on February 3rd. If those conditions haven't been met then I think it would be appropriate for us that we move on the current matter which we'll hold into abeyance until then, revocation of license, right?

MICHAEL GARDNER: Okay. I think by agreement we need to vote on that.

SALLY LOH: Okay. Thank you.

GERALD REARDON: I make a motion and I'll second that.

MICHAEL GARDNER: We'll take a vote then, all right?

All those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: Thank you.

So you understand what you were supposed to do, your obligations?

SALLY LOH: Yes.

ROBERT HAAS: So we are clear, if you don't resolve this matter by February 3 in terms of the fees that are owed to License Commission, on the 3rd, we'll move to revoke your license because for no payment of fees. So it is important that you do this before February 3rd.

SALLY LOH: Thank you.

ROBERT HAAS: Thanks very much.

Good luck.

MICHAEL GARDNER: Council Reeves has requested an item out of order?

KEN REEVES: Yes. All Asia and New Asia one is below --

GERALD REARDON: 350 Mass.

KEN REEVES: Below the Dolphin which

is much different than the other All Asia.

I actually come on the application of Mr. Childs for a new restaurant in Central Square called Moksa, which is to be at the site of the Central Square Theater, which is something that has been vacant for three plus years, and as Chair of the Mayor's Red Ribbon Commission on the delights and concerns of Central Square, I could not be more pleased to support this proposal. I would like to say that this is a very, very, interesting time in the city in terms of the food and entertainment reality because there's a lot going on, and there's a lot of desire to place good establishments both in Kendall and in Central Square to support this notion that within a square mile of Kendall Square is the most innovative place in the universe, which is the result a study of the Boston Consulting Group for Kendall Square.

Now, we in Central Square know that the best food in Greater Boston is in Cambridge, and I have seen the drawings for this establishment, they're unspeakably beautiful. He's proposing to do a restaurant/bar with outdoor seating on Mass Ave, which is something that we should encourage because it makes the city more lively street scape, there's a private courtyard that will also have seating. When you enter the establishment, you first enter a bar area as proposed, and after the bar area, there is a restaurant area, and very exciting to me there's yet a third space that is a flexible space that will have a stage and can be used for performances, et cetera.

So it really -- and they have applied for a licenses to do a range of entertainment. It's just the kind of excitement factor that Central Square needs

as we go through this time to look at how we can protect and upgrade the square.

So I would -- the operator, Mr. Chowdhury, is someone who's experienced in Cambridge, he has a lovely restaurant in Harvard Square, Om, the beauty of that is reminiscent of this plan, although the new plan is something quite edgy and new.

So Central Square is really on the move. You have a couple other places like Flour for Flour that wants to extend its hours later and to put outdoor seating in that block of Mass Ave is a dream come true.

So, we ask you, as the Commission, to really work with us as we go forward. But to get a new spot such as that proposed by Mr. Chowdhury for Central Square, would be a tremendous, tremendous assist.

And I would just say two other brief things. This Moksa Restaurant is one that

was a small one in East Cambridge that has grown larger now, and there's a great presence over by Roosevelt Towers, and I think they really should be supported. For many years they didn't a liquor license and sort of did good battle with the Midwest Grill, but now that there's kinda equality and they have quite a popular brand there, and I mentioned Flour, and you said both the La Creperie and Central Square Theatre wouldn't be on, so I will depart with those comments.

This is a very, very exciting time.

There are -- what is happening is that rather than leave restaurant brokerage to the commercial real estate industry, there are now agents who are going to successful operators, like the Central Kitchen, like the Enormous Room, and say, "Well, you got two great places here. We'd like you to come

over here and we'll reduce the rent for the first three years to make sure you're successful." And this is a completely new trend, so all of the hot chefs, everybody is after them to see if they can get them and there's -- we're dueling in Harvard and Central and Kendall Square and it's a good thing.

So you have a big role to play in that. And thank you for the detailed job that you do. And thank you very much for taking me out of order.

MICHAEL GARDNER: Thank you for your perspective and insights. Thank you.

APPLICATION: GRAFTON, INC. D/B/A RED LINE
BAR & GRILL

MS. WATSON: Application for
Grafton, Inc. d/b/a Red Line Bar & Grill,

Patrick Lee, manager, holder of an all alcoholic beverages as a restaurant license and entertainment license at 59 JFK Street, has applied for a change of premises description to extend the bar area and an increase of capacity from 175 (145 seats, 30 standing) to 201 (171 seats, 30 standing).

JAMES RAFFTERY: Good evening. Good evening, Mr. Chairman, Commissioners.

For the record, my name is James Rafferty. I'm an attorney with the law firm of Adams & Rafferty located at 130 Bishop Allen Drive. Appearing with me on behalf the licensee, Grafton, Inc., I'm here with the Lee brothers, Patrick and Peter. Patrick is the tall one. Peter is -- Patrick is the manager of record. Between them they are some of -- represent some of Cambridge's finest licensed establishments. They are the owners and operators of Grafton Street,

Temple Bar, and their most recent venture that's doing quite well is Brattle Street House Tavern at the site of the former Worst House. They have been operating Red Line in its current location at 59 JFK Street for approximately eight years. They were successor to the Crimson Sports Grill which was a regular attendee at these hearings. I'm pleased to say the Red Line doesn't need to come here that often, but an opportunity has arisen that retail space next door has become available and the operators have worked out an arrangement to amend their lease and take over the space, so it represents a modest expansion, it's an increase of 26 seats, but will allow for a little overall polishing up of the space, and in the industry, I'm sure you're aware after a certain period of time, it is always time to put a little new capital, a little more

priority into a restaurant venue, so this will be part of an overall renovation, largely cosmetic, but with the additional space that will allow for an expansion as depicted in the plans.

I'm happy to answer any questions, but I think the track record of the licensee, both at this location and several other locations, I would suggest warrant approval and represent the type of conduct and operation that the Commission seeks in its licensees.

MICHAEL GARDNER: Mr. Rafferty, we received notice late today from Michael J. Muehe who's the executive director of the Cambridge Commission on Persons with Disabilities also the ADA coordinator from the -- for the City expressing some reservations about this expansion based upon the configuration of space and access by

persons with disabilities.

I appreciate you may not have had an opportunity to see this before. Would I be correct in that, sir?

MR. RAFFERTY: Yes, this is the first I'm aware of this at this moment.

Well, I would only say that, as I said, these are experienced operators that do -- are represented by architects and designers if there's a need to modify, it suggests here this is not an egress issue something that's construction related. It seems to be the nature of the tables and the seating, so I would respectfully suggest that can be dealt with rather easily, and we would be happy to address that in any fashion that the Commission saw as appropriate.

I'm not familiar with the particular reference to the access board, but I would say based on the issue, he's making reference

to the number high-top tables and the like.

Certainly a legitimate issue and one that I can say without even lengthy discussion with my client, they are fully committed to that, and all their premises are accessible, and we'd gladly take a look at that.

GERALD REARDON: Is there much construction involved with the expansion in terms of party walls or...?

PATRICK LEE: There's a small pass-through into the adjoining space on both sides of the existing bar, but that's it.

GERALD REARDON: Nothing structural. So the egress that was there for that establishment is still going to be used?

PATRICK LEE: Everything remains the same.

JAMES RAFFERTY: I'm just going to kinda dash in a line as to -- so you can see

where this is roughly everything on the left side here -- pardon me. The hatched area represents the new space, Chief, and you will see the existing egresses as they are out there.

GERALD REARDON: The fire alarm and sprinkler system is being carried over?

PATRICK LEE: Yes.

GERALD REARDON: So there will one common zone for fire and sprinkler at the end of the day, or you will add a zone so that your panel will be indicative of the entire property, it won't be two separate panels in two separate locations?

PATRICK LEE: Exactly.

ROBERT HAAS: What did you do for this drawing? See the hatched area there?

PATRICK LEE: That's the new --

ROBERT HAAS: On the left?

PATRICK LEE: Yes. That's the

existing dry goods retailer that's vacating.

ROBERT HAAS: Okay.

JAMES RAFFERTY: So, they're expanding everything on the right-hand side that's preexisting, so the change of premises involves the area that I've hatched.

PATRICK LEE: Actually that backroom exists now as it's.

ROBERT HAAS: So it's just the area in front?

JAMES RAFFERTY: My hatching goes too far.

GERALD REARDON: Your property is kinda of an L around this originally, correct?

JAMES RAFFERTY: This is a little -- this is the base of a parking garage so it doesn't have the typical rectangular space associated with retail. So the back room is already part of the premises, so my hatching

is slightly less than accurate.

MICHAEL GARDNER: It was a dry good store, did you say?

ROBERT HAAS: Was this a knitting store?

PATRICK LEE: I was a knitting store.

MICHAEL GARDNER: It had it's own egress?

PATRICK LEE: Yes.

MICHAEL GARDNER: Which will remain?

JAMES RAFFERTY: No, I don't believe so.

PATRICK LEE: No. That egress will be gone, but the egress that we already have existing will replace that. So there's two doors in the front.

JAMES RAFFERTY: I think the location of the bay window is probably in the general area where the door is today.

MICHAEL GARDNER: I see.

ROBERT HAAS: So this back area in order to get out, you'd have to go through those two passageways, is that the way I'm reading it?

PATRICK LEE: Yes.

GERALD REARDON: There's no rear egress even on that back --

ROBERT HAAS: Here. There's nothing on this side.

PATRICK LEE: There's two doors in the front.

MICHAEL GARDNER: Presently the back room, the only egress from the back room is through the front as well?

JAMES RAFFERTY: There's two front doors.

PATRICK LEE: That's correct.

JAMES RAFFERTY: That's been the case since the premises opened 20 years ago.

Those are all interior walls into the garage, the back wall, so the egress is all front egress.

ROBERT HAAS: My question to the fire chief is: Are those two passageways sufficient?

GERALD REARDON: What they have to do when they go to do this, they'll need a -- based upon the seating and exit flow calculation that will tell them what the nominal flow is between those, and if those two doors are adequate or they have to be made larger or they'd have to put in third door, but that's something that has to get done when they come in for their --

JAMES RAFFERTY: ISD Review -- plan review for the building permit.

MICHAEL GARDNER: But it looks like there's no possibility of a third egress on the -- essentially in this area because of

the parking area.

JAMES RAFFERTY: That's a physical impossibility. That heavy black line represents a concrete wall below grade into a parking garage.

GERALD REARDON: It's also a fire separation between the parking garage and this facility.

JAMES RAFFERTY: It was visited extensively at the time of the -- this is actually the third premises, I believe, that have been in the building since it opened. But we have gone through those calculations and the architect is Mike Lovett and knows that we'll need to look at that, and that is the option they mentioned that if there was a determination that a third door was needed, but I know it's based a number of people, distances and...

GERALD REARDON: There's a chart on

different establishments on what normal exit flow is on people, it's pretty well established, so...

MICHAEL GARDNER: Are there any history of violations or difficulties with this premises, Ms. Watson?

MS. WATSON: No.

MICHAEL GARDNER: Other questions from the Commissioners?

ROBERT HAAS: I'm just curious if they are any comments from the public.

MICHAEL GARDNER: Any members of the public who would like to be heard on this matter?

Yes, please.

If you could just come up and state your name for the record?

DENISE WILSON: Yes. Denise Wilson, I'm the Executive Director for the Harvard Square Business Association and here tonight

to offer our wholehearted support for this petition.

Thank you.

MICHAEL GARDNER: Thank you very much.

ROBERT HAAS: So, Mr. Chair, can I make a recommendation?

I think it would be helpful for us if you were able to reconfigure your scene designs to satisfy Mr. Muehe's concerns and do that before the February 3rd decision hearing, and so, I'd suggest maybe you can confer with him and if you could sign off in terms of his satisfaction that would be helpful for us.

I have to say it's an impediment, but it would be helpful if that pathway is cleared.

And, Mr. Rafferty, would we get another drawing to say that there's

sufficient pathway prior to our decision?

MICHAEL GARDNER: Is that something that comes from an inspection by --

JAMES RAFFERTY: Well, I was gonna say, Mr. Muehe -- with all due respect, Mr. Muehe's role -- we do a lot of floor plans and I know Mr. Brayman (phonetic) reviews the floor plans, I think his comments are well taken.

I wish they arrived before 4:00 today, the application has been there for a month. But, sure, we will look at that. I'm not sure that the plan would depict much difference. As I understand the comments, it's the height of the proposed tables, but I -- the access requirements are an element of the building code, and a building permit can't be issued unless there's compliance with that.

So to do code review at this stage

of the proceedings is unusual whether it be for access or any other question. I think having been alerted to this issue, we'll now deal with it proactively starting tomorrow.

But I'm not sure that the number count will change, nor would there be a reason to think that this element of the building code would be the subject of further review at this level.

GERALD REARDON: My point is where it's kinda of a -- we're adding seats to it sometimes that can put you over the top. So, obviously, you know, the review that goes on and the COs, they are contingent on meeting the code, my point is to make sure because it could be on the edge of what the exit flow is by adding to it before they go forward too far, but they make sure that that --

JAMES RAFFERTY: No, no. I understand that to be a separate issue than

Mr. Muehe's issues. We'll need to address both. The Commission would want us to get back at this stage?

GERALD REARDON: I'm just making the applicants aware that you wouldn't want to go far down the road with this and find out that the next proceeding put it over the top of the exit flow.

So we're here to be helpful in terms of making sure those things are satisfied, and if you had to drop five seats to stay under the limit, whatever is necessary, I'm just making that friendly amendment.

JAMES RAFFERTY: It's most helpful.

MICHAEL GARDNER: By far the least experienced member of the Commission now, what I take it is we would be acting to approve an increase in the capacity of the 26 all subject to code approval anyway --

JAMES RAFFERTY: Oh, for sure,

right. So there's two parts of the application, change of premises because sometimes there's a capacity increase without a change of premises so in this case we're expanding the premises by incorporating the adjacent retail space and seeking the increase.

But everything from fire systems and egress and that is -- and you're quite correct, I mean, the good thing is that this operator uses architects to do these things and this is not a one-off operation, I mean, these issues are important, and learning about them early will allow us to deal with them.

So, obviously, we'll defer to the Commission's a preference. I was just suggesting that historically the Commission has recognized those issues and we can report back or --

MICHAEL GARDNER: I suggest we would entertain a motion to defer this to our decision hearing and encourage Mr. Rafferty and operators to confer with Mr. Muehe and appropriate staff to come up with the plan which Mr. Muehe feels is in compliance with the requirements that he cited in his memo today.

GERALD REARDON: Agreed.

ROBERT HAAS: I'm thinking.

MICHAEL GARDNER: All right.

ROBERT HAAS: I mean, I don't want to hold the application hostage to Mr. Muehe's sign-off.

JAMES RAFFERTY: I was gonna say and I don't want to use that -- I don't have enough knowledge to know that the assertions in Mr. Muehe he's email are an accurate reflection of the building code requirements. So, I must confess that I'm a little uneasy

with the Commission adopting that as a requirement of a sign-off by Mr. Muehe.

I think the traditional approach here is if we need to provide evidence of compliance with the building code on issues around egress and access, we'll provide that.

MICHAEL GARDNER: This is different than egress.

JAMES RAFFERTY: No, I said access -- when I say access, I meant handicap access.

And I'm not looking to limit and we're happy to talk to Mr. Muehe, but investing in him the sign-off authority may be not inappropriate, but not the customary way.

MICHAEL GARDNER: Point taken. And not my intent to delegate any responsibility beyond the Commission.

JAMES RAFFERTY: With the

Commission's approval, we would then have the architect confer with Building Department, Mr. Muehe, if necessary, on both of the issues cited this evening, the issue around adequacy of the egress as well as compliance with handicap accessibility issues in the building code.

MR. HAAS: I guess that was my thinking to have a discussion.

You want to make a motion?

MICHAEL GARDNER: I was asking for someone to -- I was asking for a motion -- I was requesting a motion be made by somebody.

ROBERT HAAS: I would make a motion to take the matter under advisement.

GERALD REARDON: Seconded.

MICHAEL GARDNER: Just clarification on that. Does that mean that it would not necessarily come up at the decision?

ROBERT HAAS: No. I think

Mr. Rafferty articulated what we would be interesting in seeing prior to making our decision on February 3rd.

JAMES RAFFERTY: Right. But it would be adverse to containing within the -- identifying the two issues in the motion just so the issues --

ROBERT HAAS: I would modify my motion to take the matter of under advisement predicated upon drawings that address both access and egress from the restaurant.

JAMES RAFFERTY: Sure.

ROBERT HAAS: That would meet the established standard.

MICHAEL GARDNER: With the understanding we would try to deal with this at our decision hearing.

ROBERT HAAS: On the 3rd.

MICHAEL GARDNER: All those in favor?

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: Opposed? No.

Thank you very much. Good luck.

APPLICATION: MOKSA, LLC

MS. WATSON: The next application is Moksa, LLC, Taslim Chowdhury, manager, has applied for a transfer of the all alcoholic beverages as a restaurant license currently held by the Ninety-Nine of Boston LLC to Moksa, LLC at 450 Massachusetts Avenue. The proposed hours of operation are Monday through Wednesday from 11 a.m. to 1 a.m. and Thursday, Friday and Saturday and the night before a legal holiday from 11 a.m. to 2 a.m. with the seating capacity of 221 (165 seats inside, 24 patio seats on a private patio and 32 patio seats on the public sidewalk) and

standing for 315. An alternate floor plan for the back room to be used as a function room with seating has also been submitted. Applicant is also applying for an entertainment license to include: Dancing by patrons; comedy show; light show; darts; live music with amplification; dancing exhibition; floor show; magic show; karaoke; jukebox, video jukebox, audio below at or about conversation level; eight TVs/video screens; radio; and one cinema screen and a DJ.

MICHAEL GARDNER: Good evening.

SEAN HOPE: Good evening, Mr. Chair, members of the Commission, Attorney Shawn Hope, Hope Law Offices in Cambridge. Tonight on behalf of the petitioners, I appear for Solomon Chowdhury with his brother, Taslim Chowdhury, we also have the project architect, a Mr. Andy Gobinski (phonetic).

This is an application to transfer

an existing license, formerly owned by the Ninety-Nine Restaurant out of Alewife to Moksa, LLC. The location would be 450 Mass Ave. This location, 450 Mass Ave is part of a renovated building. If you're familiar with the Central Square Theatre, this is the property adjacent to it on the same side of the street.

As you know there have been vacancies -- vacant storefronts throughout Massachusetts Avenue, most notably at the corner of Mass Ave and Norfolk Street, near Blockbuster Video.

So as Council Reeves pointed out, there's been lot of support and encouragement by community development, and as you see in the record by City Council legislators to actually not only have this space filled, but filled with a nonfinancial institution.

So we have received lots of support

for this restaurant and this concept. I would also say MIT, who is the landlord there, has been working well with the client. This is a vacant space and as you can see from the plans, this is an intricate build-out. This is a multi-year lease and this is obviously an investment that we feel will be an amenity to Massachusetts Avenue and the Central Square community.

Also, a part of the application is the full complement entertainment licenses that we applied for.

This is a restaurant/lounge, and the concept, and Mr. Chowdhury will speak in more detail, but just briefly, the concept is Asian street food. If you look at New York, LA and some of the major cities, outside of the traditional restaurant, when you have larger plates and it's more of your formal dining experience, this concept of Asian

street food is more like your traditional tapas.

So part of the concept, as you will see with the design is that you'll have smaller plates, you will people eating at smaller tables congregating, and also restaurant and lounge concept has to do with that rear function room.

So we have two plans, one is a base plan that is for restaurant seating, that's the normal plan, but then also in the evening, as the other restaurants will have, we move the chairs and have a transition, you have some music there, a DJ, you could have different functions, so it's a newer concept. It does allow restaurateurs in this market to be able to have different streams of revenue and also we do feel it fits with the tapas concept.

I know many of the Commission are

familiar with Mr. Chowdhury, he's the owner of Om Restaurant, him and his brother have been in the restaurant business over 20 years, they own a restaurant in Boston, they manage over 60 employees in Boston as well as Om Restaurant. So, they're known in the community, they have a strong reputation, as you see from the letters in the file.

SOLOMON CHOWDHURY: Solomon Chowdhury. Just to give you a little bit of background of me, we actually, both of us, grew in Central Square on Pearl Street back in the 90s, so we know the changes that have been happening in Central Square and needs to happen. I'm very familiar with Central Square.

In terms of restaurant experience, I started my first restaurant in Boston, in Dorchester, which is a very nice neighborhood restaurant. I actually was awarded by Mayor

Menino having one of the best storefronts in Dorchester Ave. That's my first experience with restaurants. Since then, I actually opened a restaurant in Harvard Square called Om Restaurant & Lounge, and we opened that back in 2005. Since then, we opened -- in 2005 we were actually ranked top 25 restaurant in the world. And this is the only restaurant to ever get that type of attention in the state.

So, we do basically the same concept that we have that have been doing for about five years in Harvard Square, restaurant lounge, we wanted to bring that to Central Square also.

Been working with MIT, and they have been very helpful in term of getting us the space. Really excited. We gonna do Asian street food which is -- instead of doing big plates, we're going to do small tapas, which

is very famous like set in in New York and Chicago and Miami or LA and we wanted to bring the same concept to Cambridge because for that we actually have a lot of people coming from Boston to try out this new concept that we're gonna to do.

We have outdoor seats, which can be very beautiful, open windows that you can see from outside. We'll do some entertainment at light night.

One of the things we found out that actually we do a lot of in Harvard Square is a lot of private dining. There's lot of companies in Cambridge that there's a big need of private dining space and one of our rooms in the back will actually fill that.

Right now we do average of about three private dining dinners at Om, and one of the challenge we have there is we don't have actually a big enough room to fill that

space. A lot of these companies they are taking business to Boston because there's a lot of big private dining rooms, which I don't think there's any in Cambridge, so...

GERALD REARDON: That's the area you're calling the function room?

SOLOMON CHOWDHURY: Exactly, yes. It will be more of a private dining space and a lot of the companies from Central Square and Kendall Square actually will have dining space.

ROBERT HAAS: Is this an alleyway or adjoining street off the function room?

SOLOMON CHOWDHURY: That's actually Green Street.

ROBERT HAAS: It goes out to Green Street?

SOLOMON CHOWDHURY: Yes, exactly.

GERALD REARDON: This will be a total build-out?

SOLOMON CHOWDHURY: Yes.

GERALD REARDON: Basically everything new for the most part?

SOLOMON CHOWDHURY: Exactly.

ROBERT HAAS: What are your plans with Om?

SOLOMON CHOWDHURY: We there -- been there five years and we still have another 15 year left in our lease.

ROBERT HAAS: So you're going to remain at that location?

SOLOMON CHOWDHURY: Absolutely. Not looking to go anywhere.

ROBERT HAAS: The concept you had at Om, it's not going -- I'm hoping it's not going to be as complicated with this restaurant as you laid out with Om.

SOLOMON CHOWDHURY: You know, everyday you learn lot about restaurant business, so it's a learning business

experience and I think did learn a lot by opening Om and doing the concept that I did at Om, and I'm going to take my experience from my restaurants, Shanti and Om, and use it here, which our food will not be as complicated, our food will be very affordable, it's a small plate, we didn't -- as soon as you order, within three to five minutes, it will be on your table.

Everything will be between \$6 and \$12 items, and we'll remain open for lunch, dinner and late night also.

ROBERT HAAS: So the other issue that I'm -- you know, we had some issues with in the past and I'm hoping you have been able to rectify it is as to capacity issues in terms of maintaining tight control over the number of people in your restaurant.

SOLOMON CHOWDHURY: Absolutely. We'll have multiple managers to manage

different rooms, and I'm sure there will be -- we'll make sure they are doing their job, we'll make sure there's a count at the door and at entrance of the different rooms also.

MICHAEL GARDNER: I'm not sure I understand this, where it says you have a seating capacity of 221 and standing for 315. Is that standing an additional 315 or is that counting the 221? I'm just confused by how it's written.

SEAN HOPE: That speaks to the ultimate floor plan, so the seating, the 212 back seating just includes all the interior seating and doesn't include the 24 in the patio and the 32 or vice versa, 32 on the patio and the 24 along the street, but as you see in the alternative floor plan, when we remove the tables out of the back room, that area is going to be standing. When we talk

about the maximum, that standing room would be in that back area. So as you see it there, the 212 is what will be most likely during the day, during work evening hours and once the conversion happens, then it allows for more rooms, obviously, when you move the 25 tables and chairs out of that back room, it does open up and allows for that 315 standing, although they don't have to be concentrated in that area, but it does allow for sufficient room in that back area.

GERALD REARDON: You're actually talking about a total occupancy of 480 max?

SEAN HOPE: Yes.

GERALD REARDON: Could I ask you about the adjacent property, is there any residential in those --

SEAN HOPE: The Central Square Theatre.

SOLOMON CHOWDHURY: Our direct

tenant on top of us is Central Square Theater, and on the right is Economy Hardware. I think that's going to be a CC TV, on the left will be another restaurant.

GERALD REARDON: On the second floor there's no -- I don't think there is, but there's no residential above that?

SOLOMON CHOWDHURY: No.

ROBERT HAAS: What's on Green Street?

SOLOMON CHOWDHURY: Green Street, I think -- I'm not sure about that.

GERALD REARDON: Probably Kennedy Lofts across the street.

SEAN HOPE: If your back is to the back of the building, it's to the left about a block, so you do have Kennedy Biscuit Lofts at the corner. You're right. It's actually that whole block from Pearl Street until Sidney Street.

ROBERT HAAS: Does that a potential for causing a disturbance for the people on Green Street or --

SOLOMON CHOWDHURY: I don't think so because we're not really -- we do not using that as our main --

SEAN HOPE: The main entrance is on Massachusetts Avenue.

ROBERT HAAS: I'm just thinking, when you talk about above -- at or above conversational level, I imagine that's where you're going to have your DJ and your functions and things like that, so the noise would emanate out of the back of the restaurant, right?

SOLOMON CHOWDHURY: No. All the noise will be contained within the space. I don't think we gonna have any speakers outside.

ROBERT HAAS: The noise from inside

going out being broadcast outside, so you could hear from outside.

MICHAEL GARDNER: How do you deal with soundproofing issues? Do you have sound proofing concerns with the occupant above you?

SOLOMON CHOWDHURY: Absolutely. We actually hired a company -- what is the name -- SoundTech, they have actually been consulting us on sound proofing the space because we do have a theater on top of us and the last thing we want to do is disturb any of their audience.

So, we're actually working with the consulting firm that actually giving us drawing how to soundproof that space so the sound is actually contained within the space, it's not traveling outside or upstairs.

GERALD REARDON: Your doors on Green Street would be emergency egress only.

SOLOMON CHOWDHURY: It's mostly emergency exit, and exit -- and maybe some time we'll get our deliveries and equipment there.

GERALD REARDON: When the function hall is operating and you have something going that that's not going to be a point where doors are opening and closing?

SOLOMON CHOWDHURY: No.

MICHAEL GARDNER: The soundproofing that you'll address will both be for the street and ceiling?

SOLOMON CHOWDHURY: Exactly. Our goal is to contain the sound within that room so it doesn't travel outside.

MICHAEL GARDNER: Have there been issues in your operations with respect to capacity before?

SOLOMON CHOWDHURY: We had one time because we started our business, we like have

very limited seats because back then, the way the license worked was when to purchase your license, how many seats you had, even though our space was much larger, we only had 93 seats, but since then we increased our capacity to 250. So we started our restaurant in Harvard Square with 93 seats, but now it's 250 seats.

GERALD REARDON: Is the liquor license from the Ninety-Nine the same size and capacity as this one?

MS. WATSON: I'm not sure what the Ninety-Nine -- but it doesn't say to increase the capacity, so I'm not sure.

GERALD REARDON: Counsel, do you know, does that count for all the seats that the Ninety-Nine would be absorbing?

SEAN HOPE: Is the question how many seats are transferred with the license?

GERALD REARDON: Yes.

SEAN HOPE: I don't have that information. And point of clarification, but I didn't believe the transfer to the new location carried the same, it was the location that the Ninety-Nine had that had the amount of seats and had the license approval for that, but I don't think the number of seats travel with the license.

So, this location based on access and egress and, you know, what we can get for building permit will have the required amount of seats, but I don't think the license carries that amount of seating.

GERALD REARDON: You're not trying to bank seats or --

SEAN HOPE: Right, no, no. This is a totally brand-new space.

GERALD REARDON: The point I guess I'm making clear is you wouldn't be trying to bank extra seats and being in abeyance?

SEAN HOPE: No.

MICHAEL GARDNER: Any members of the public who would like to be heard on this?

Good evening, sir. Could you just introduce yourself for the record?

GEORGE METZGER: Yes. My name's George Metzger, M-E-T-Z-G-E-R. I'm here as the president of Central Square Business Association and you have a letter from Carl Baron, I believe, in support of the restaurant. He knows you. And so we're in support of this application.

MICHAEL GARDNER: Thank you very much.

PATRICK LEE: My name is Patrick Lee owner of Red Line. I'm here in support of the application. Solomon has been a conscientious hands-on owner, he's right around the corner from us at Red Line, and most importantly, he has been a great

neighbor. Good luck.

MS. WATSON: We also have members of City Councilors, Councilor Decker in favor, Councilor Sidel, and Councilor Toomey, Mayor Maher, and Councilor Reeves. Let's see. The Executive Director of CitySprouts program that works with the Cambridge Public Schools, John G. Giovanni of Trinity Property Management, Craig Kelly, Councilor Kelly. Also, the Cambridge Chamber Of Commerce is in favor.

MICHAEL GARDNER: Thank you. I see we have some other members of the public.

DENISE JILLSON: Denise Jillson, Executive Director of the Harvard Square Business Association. I have no business speaking on behalf of Central Square, but here to support Solomon's application much like the Lee brothers. He's a very active member of the Harvard Square Business

Association and has been a great operator and a great community partner.

MICHAEL GARDNER: Thank you very much.

Any other comments from the public?

(No response.)

Pleasure of the Commissioners?

GERALD REARDON: I make a motion to approve the application subject to conditions, regulations as set forth in terms of code building and...

ROBERT HAAS: Seconded.

MICHAEL GARDNER: All those in favor?

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: Opposed?

(No response.)

Congratulations and good luck.

APPLICATION: NAKA ENTERPRISES, INC. D/B/A

THE SNACK BAR

MS. WATSON: All right. The next application is Naka Enterprises, Inc., d/b/a the Snack Bar, MA Khan, manager, has applied for a common victualer license to be exercised at 691-697 Cambridge Street, said license, if granted, would allow food and non-alcoholic beverages to be sold, served and consumed on said premises with a seating capacity of 20. The hours of operation will be 6 a.m. to 11 p.m. seven days per week.

MICHAEL GARDNER: Thank you.

MR. GOLDBERG: Good evening, Mr. Chairman. Attorney Bernard Goldberg, 620 Massachusetts Avenue, Cambridge. I'm here representing the applicant.

On my immediate right is the manager. State your name and address, please.

ZAM HAQ: I'm not a manager.

MOHAMMED KAHN: Name is Mohammed Kahn, my address is 227 Sea Street, Hyannis, Cape Cod.

ZAM HAQ: My first name is Zam, Z-A-M, my last name is H-A-Q. I'm the president of the corporation. My address is 2 Galloway Road, No. Merrimack, New Hampshire 03054.

MR. GOLDBERG: Mr. Chairman, members of the Board, this is a transfer of the Snack Bar at 691-697 Cambridge Street. It's a takeover of the business. Nothing is going to change relative to it. No alterations or anything like that.

I noted in today's hearing that there was a question with regard to compliance with the Americans With Disability Act. I have spoken to both members, one in Inspectional Services as well as State

Representative Mule, and we're complying with what he requires at this particular moment in time. If there's any questions with regard to the manager, the manager has a great deal of experience relative to the operation of this type of business, pizza business, subs and sandwiches and the like, and I can have him relate to you what his previous experience is, if you so desire.

MICHAEL GARDNER: Briefly, sir, please.

MOHAMMED KAHN: I have been working like 15, 20 years in the restaurant business, sandwiches, pizza. I have been working in Cape Cod, Beverly, Massachusetts, Danvers, and currently I'm working in Worcester.

MICHAEL GARDNER: As a manager of a facility like this?

MOHAMMED KAHN: Yes.

ROBERT HAAS: Would you say the name

of the community again? I didn't catch that.

Where are you working as a manager now?

MOHAMMED KAHN: Worcester.

ROBERT HAAS: Worcester, I got it. I'm sorry.

GERALD REARDON: This is -- right by Warren Street?

ZAM HAQ: Warren Street.

GERALD REARDON: This is the one story existing -- are you going to do any modifications?

MR. GOLDBERG: No modifications at all.

I have obtained the signatures on the -- from the Inspectional Services, the Health Department and from the Fire Department, and we're ready to go and if tomorrow is good day, and the Licensing Department was onboard, we would like to go

an ahead and obtain our common victualer's license tomorrow or Thursday.

ROBERT HAAS: The prior owners are still operating the business?

MR. GOLDBERG: He's there presently and with the closing of title will take place on Thursday or Friday.

ROBERT HAAS: Is it the same menu?

MR. GOLDBERG: Absolutely the same.

ROBERT HAAS: It's the same current operating hours?

MR. GOLDBERG: I'm sorry?

ROBERT HAAS: Same operating hours?

MR. GOLDBERG: I believe they're operating from 6:00 to 11:00. I think there may be a change on that. The previous owner opened up at 9:00.

ROBERT HAAS: So you're going to be opening up earlier?

MR. GOLDBERG: Yes.

MICHAEL GARDNER: Is there any complication with the license?

MS. WATSON: No. If they're opening earlier, though, they would have to notify abutters. I don't have the old -- the other file. It's not here, so -- and they didn't notify abutters. That's the only complication.

ROBERT HAAS: You're staying with the current operating hours?

MR. GOLDBERG: We'll stay with the existing time.

MS. WATSON: And then come in and change the hours later.

GERALD REARDON: It could be that the license is actually even earlier than 9:00 and they chose not to, so...

MS. WATSON: Right. When you come into the office if it's approved when -- we'll compare and we'll figure out then what

the resolution will be.

MR. GOLDBERG: No problem.

GERALD REARDON: I would make a motion -- anybody want to be heard on this, I guess? Sorry.

MICHAEL GARDNER: Any there any members of the audience who would like to be heard on this matter?

(No response.)

Chief?

GERALD REARDON: I'd make a motion that we approve subject to the proper documentation paperwork of the License Commission.

ROBERT HAAS: So, you're approving the hours that are currently --

GERALD REARDON: The hourly that -- whatever the hours that are presently documented. If you need to change it, you have to come back for such.

ROBERT HAAS: I second that.

MICHAEL GARDNER: All those in favor, say "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: Aye.

MUQUECA RESTAURANT INC. D/B/A BOM CAFE.

MS. WATSON: The next application is Muqueca Restaurant Incorporated d/b/a BOM Cafe. Antonio Gomes, manager, has applied for a common victualer license to be exercised at 1093 Cambridge Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served and consumed on said premises with a seating capacity of 20. The hours of operation will be 6 a.m. to 11 p.m. seven days per week.

MICHAEL GARDNER: Well, thank you

for coming, sir. If you could just state your name for the record.

ANTONIO GOMES: Antonio Gomes, 289 Elm Street in Cambridge.

MICHAEL GARDNER: Tell us about your plans.

ANTONIO GOMES: We have been operating there as Muqueca Restaurant, we moved to another place nearby.

MICHAEL GARDNER: Across the street.

ANTONIO GOMES: Yes, 1008 Cambridge Street. We will like operate the new one, we have to concentrate on that, so the door closed and we renovated and now we start for us to reopen as a cafe as we had the plans before. So not operating the same thing as we're doing at the new place, just changing the name, not changing anything much. Just colors on the wall, things like that. Anything else will remain the same, but

change the menu for coffee, snack, breakfast, things like that.

MICHAEL GARDNER: How long were you closed?

ANTONIO GOMES: For about eight months.

MICHAEL GARDNER: And kept whatever licenses were necessary to be maintained?

MS. WATSON: Correct.

MICHAEL GARDNER: And who will be managing the second location?

ANTONIO GOMES: Myself.

MICHAEL GARDNER: And you're also managing the other place?

ANTONIO GOMES: My wife will be in the other. Basically I'll be there in morning, during the day and then go to the other place at night to help out, but to have other people helping, too.

MICHAEL GARDNER: But you will be

open until 10:00 at night?

ANTONIO GOMES: Yes.

MICHAEL GARDNER: The principal difference between the two places is existence of an alcoholic beverage license?

ANTONIO GOMES: No. The Muqueca Restaurant has alcohol.

MICHAEL GARDNER: And this place won't?

ANTONIO GOMES: No.

MICHAEL GARDNER: What other differences between the two?

ANTONIO GOMES: The food. It's going to be more like fast food, coffee, juices and breakfast with omelets and things like that.

ROBERT HAAS: It's not a fast food establishment, though, right?

ANTONIO GOMES: No.

ROBERT HAAS: You have a different

license for that?

GERALD REARDON: Your renovations are all done now?

ANTONIO GOMES: Yes.

GERALD REARDON: You have all your sign-offs?

ANTONIO GOMES: Just paint. Didn't change much at all. Just the same. Just painting and cleaning and things like that.

MICHAEL GARDNER: Other questions from the Commissioners?

ROBERT HAAS: No questions.

MICHAEL GARDNER: Any members of the public who would like to be heard on this matter?

(No response.)

MS. WATSON: Councilor Toomey wrote in favor.

ROBERT HAAS: I'd like to make a motion to approve.

GERALD REARDON: Second.

MICHAEL GARDNER: There's been a motion to approve and that's been seconded. All those in favor say "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: Aye.

Opposed?

Thank you very much. Good luck, wish you well.

APPLICATION: CAKEWALK BAKERS LLC D/B/A
FLOUR BAKERY & CAFE

MS. WATSON: Application: Cakewalk Bakers LLC d/b/a Flour Bakery & Cafe, Aaron Constable, manager, holder of a common victualer license at 190 Massachusetts Avenue has applied for an increase of hours from 7 a.m. to 7 p.m. seven days per week to

7 a.m. to 9 p.m. seven days a week. The applicant is also applying for a seasonal outdoor patio with 20 seats on the public sidewalk.

MICHAEL GARDNER: Good evening.

AARON CONSTABLE: Aaron Constable, 134 Milk Street, North Andover 01845.

Good evening.

MICHAEL GARDNER: Tell us about your plans.

AARON CONSTABLE: We have been much busier. We have been open for six months now. Much busier than anticipated. We also have a lot of MIT students coming at night and they seem to like to do their homework there. We offer free Wi-Fi, which is probably a bad thing, but we've seen an increase in business. It's great having Central Bottle as a neighbor. They're open until 8:00 during the week. So our Boston

restaurant in the South End is open until 9:00, and we offer take-out dinner specials and sandwiches and our full menu from open to close.

We're hoping -- we're approved by City Council last -- late summer and fall for outdoor seating that had past the outdoor seating season, so I was hoping to reapply for the March license because the license, I believe, go from March to March. So I'm going to be speaking with Vincent, who was off last week, this week to work on how many we can have and where they will go on.

ROBERT HAAS: This 20 is not a hard number yet?

AARON CONSTABLE: No, no.

MICHAEL GARDNER: Does that present problems for us?

MS. WATSON: It does. Can't be any more than 20. 20 is what they applied for

here.

AARON CONSTABLE: That's as much as we want to have.

MICHAEL GARDNER: And if it's less?

MS. WATSON: If it's less, they need to let us know.

AARON CONSTABLE: Of course.

MS. WATSON: Once you get the permit from the DPW, you need to file a copy of it with us.

AARON CONSTABLE: Of course, yep.

MICHAEL GARDNER: Have you had experience without outdoor seating before in terms of your responsibilities?

AARON CONSTABLE: Yes, both -- Boston -- we have two locations in Boston. One is kinda on private property and the other one is on Washington Street in the South End, so it's slightly different there because it is roped off, but we rent that

from the city, and we maintain the area, there's no smoking per law, things of that nature.

We don't do table service, it's kinda bus your own, but we have dishwashers and staff that go out and wipe down the tables and keep that area nice and clean.

MICHAEL GARDNER: Any particular challenges for outdoor seating that might not be apparent to us?

AARON CONSTABLE: I mean, we provide our own trash receptacles. Like I said, we have people keeping an eye on that area throughout the day and at night as well. There are -- we had problems in the past in the South End with homeless people soliciting for money and things like that, but it happens inside the restaurant as well.

MICHAEL GARDNER: Currently?

AARON CONSTABLE: Not so much in

Cambridge actually as compared to Boston, but managers are on duty and supervisors are on duty seven days a week, so...

MICHAEL GARDNER: And what is you're a typical outdoor season in your mind?

AARON CONSTABLE: In Boston legally we go April 1 to October 1. Sometimes the weather doesn't permit. We wait until it's good and warm so our staff doesn't have to do the setup and take down. We bring everything in at th end of the night, lock it up and bring it back out in the morning.

MICHAEL GARDNER: Does Cambridge have rules about that?

MS. WATSON: Yeah. We don't have rules about taking it in and locking it up but we do have a certain season. It goes through the end of November. Now I'm not sure when it starts, I will have to check that.

MICHAEL GARDNER: Hardy.

MS. WATSON: We're hardy.

MICHAEL GARDNER: Other questions.

ROBERT HAAS: No other questions.

AARON CONSTABLE: I had one question. I don't know if made it on there, but our building license says 48 seats and part of the application, I wanted to make sure that the common victualer matched up with what Inspectional Services had said because we've got two --

MS. WATSON: We can only license you for what the License Commission granted you for capacity. Even if the Building Department granted you a higher occupancy, so if the Building Department grants you a higher occupancy and you have a lower capacity, you have to come back and change it. Speak to us in the office. Come to the office and we'll take care of it.

ROBERT HAAS: We need to see the drawings if you're going to increase your seating capacity, you have to show us your drawing so we can be certain --

AARON CONSTABLE: Drawing, yep.

MICHAEL GARDNER: But you'll check with them as to what the license currently says. You can match that up with whatever the building --

AARON CONSTABLE: Yeah.

MICHAEL GARDNER: Before we act on this, are there any members of the public who would like to be heard?

(No response.)

GERALD REARDON: I make a motion to approve subject to the review and seating by Public Works in terms of number of seats.

MICHAEL GARDNER: If there's a second to this motion, then we'll give you a chance to come.

ROBERT HAAS: I make a second to that.

MICHAEL GARDNER: Okay. Yes, sir.

AARON CONSTABLE: Sorry. And then are we going to discuss the hours as well?

MICHAEL GARDNER: No. That's part of the application is that you're moving from 7:00 to 7:00 to 7:00 to 9:00, we understand that.

ROBERT HAAS: There's no issues with surrounding neighbors and things like that?

AARON CONSTABLE: No, no.

MICHAEL GARDNER: All those in favor, please say "aye."

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: Opposed?

(No response.)

Congratulations. Please check and make sure that you got all that set up. Good

Tuck.

AARON CONSTABLE: Thank you very much.

APPLICATION: REALTY ASSOCIATES-IOWA CORPORATION D/B/A 2 CANAL PARK

MS. WATSON: Central Square Theatre is removed.

We move on to the Application: Realty Associates-Iowa Corp. d/b/a 2 Canal Park has applied to amend their existing garage and flammable license at 2 Canal Park. Their current license is for 50 cars above ground and the keeping and storage of 500 gallons of gasoline in tanks of cars, only 145 cars underground and keeping in storage of 1,450 gallons of gasoline in the tanks of cars only, 500 gallons of diesel fuel and aboveground storage tank and 50 gallons of diesel fuel in the day tank. The amendment

will add a 500-gallon aboveground storage tank for diesel fuel.

MICHAEL GARDNER: Good evening. Can you just introduce yourself for the record, please?

JANICE REARDON: I'm Janice Reardon. I'm the property manager.

ROBERT FULFORD: Robert Fulford, head of maintenance.

MICHAEL GARDNER: Could you just summarize what the change you're proposing here is, please?

ROBERT FULFORD: We're looking to amend the license. Some years ago an additional a 500-gallon tank was added for a tenant generator which feeds off the building generator, so they increased the capacity of the tanks from one 500 to two 500s, somehow the license was never amended.

MICHAEL GARDNER: So you have been

operating with a second 500 now for some time.

ROBERT FULFORD: Yes. And it just came to our attention recently that the license had never been amended.

JANICE REARDON: We've gotten a license and permit every year, but we didn't know it was made wrong. I think this year the Fire Department -- how did you find out, Bob?

ROBERT FULFORD: You know, they changed the format of our diesel fuel license, the flammable license and because of that, I think we submitted it back to the flammables license and they noticed the discrepancy in the amount of diesel on the flammables license.

MICHAEL GARDNER: This is the Fire Department in their inspection, did I understand that right? I didn't really quite

follow who discovered it.

ROBERT FULFORD: I don't recall exactly, but I believe it was the Fire Department and they said because of it, we had to have the other license amended, so we filed for the amendment.

MICHAEL GARDNER: Will this result in additional fees?

MS. WATSON: I don't know if it goes over the next graduated fee because our fees are graduated based on capacity and the numbers of, cars I'm not sure if goes into the next fee.

GERALD REARDON: I don't believe so but...

So this is another aboveground level wall house tank to supplement a separate generator?

ROBERT FULFORD: Yes, it's fed off the building life safety daytime tank, so it

feeds to the same tank as originally.

GERALD REARDON: You got a 50-gallon day tank?

ROBERT FULFORD: Yeah. 50-gallon on the -- it's a belly tank on the generator.

GERALD REARDON: Okay. And then both tanks feed -- the storage tank fuels the day tank, it's one generator with 1,000 gallons capacity.

ROBERT FULFORD: From that generator there's a feed off to the tenant generator.

GERALD REARDON: Okay.

MICHAEL GARDNER: So what permits did you get or were you required to get to build the second 500-gallon tank to begin with?

ROBERT FULFORD: I wasn't there at the time of the...

JANICE REARDON: We had a permit and we were inspected at the time, so we thought

we complied with everything. We didn't know we didn't.

GERALD REARDON: They couldn't have installed that other tank without getting permits, so it apparently was a discrepancy, it wasn't caught that they had...

MICHAEL GARDNER: And those are permits from the Fire Department and Inspectional Services?

GERALD REARDON: Yeah, they -- they probably would be both if they're electrical. There's probably a plumbing permit, an electrical and there's probably a fire at the same time.

MICHAEL GARDNER: And there was just another place to go, the License Commission apparently.

JANICE REARDON: Yes.

ROBERT HAAS: How long has this condition been in place?

JANICE REARDON: The second one has probably been there for a good four years.

MICHAEL GARDNER: Any safety issues, Chief, that you can think of?

GERALD REARDON: No. That was already looked at again this week. It's just a discrepancy in the total that's listed on the license.

MICHAEL GARDNER: Any comments or concerns from members of the public?

(No response.)

MICHAEL GARDNER: Pleasure of the Commission?

ROBERT HAAS: Make a motion to approve.

GERALD REARDON: Second.

MICHAEL GARDNER: All those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: Good luck. Thank you for coming in and straightening it out.

APPLICATION: NORTHEAST BUSINESS GROUP, INC.
D/B/A THE MAHARAJA

MS. WATSON: Application: Northeast Business Group, Inc. d/b/a The Maharaja, Aman Thakur, manager, holder of a common victualer license and entertainment license at 57 JFK Street has applied to transfer the all alcoholic beverages as a restaurant license currently held by Guido's Bar and Grill, Inc. at 13 to 15 Belmont Street to Northeast Business Group, Inc. at 57 JFK Street, second floor, hours of operation are 11:30 a.m. to 11:30 p.m. seven days per week.

MR. GOLDBERG: Good evening again.
Mr. Chairman, Bernard Goldberg, 620
Massachusetts Avenue, Cambridge.

AMAN THEKUR: First name is Aman, A-M-A-N, last name is T-H-E-K-U-R, manager of the Maharaja at 57 JFK Street.

MR. GOLDBERG: He's the manager. Your name, please?

SAJAL LATKA: First name is Sajal, S-A-J-A-L, last name is Latka, L-A-T-K-A.

MICHAEL GARDNER: Your role, sir?

SAJAL LATKA: One of the owners.

MR. GOLDBERG: Good evening again Mr. Chairman and members of the Board. I represent the corporation Maharaja doing business as Maharaja at 57 JFK Street in Cambridge. The location it was where the Bombay Club was in the past, and they intend to open up an Indian restaurant along the similar lines of what Bombay had so far as food operation is concerned.

At the present time they're requesting your approval of an entertainment

license as well as a transfer of an all alcoholic restaurant license from Guido's in Belmont Street in Cambridge for transfer to 57 JFK Street. The manager has a great deal of experience so far as restaurants are concerned and I'm going to allow him to speak and tell you what his experience factor is.

ROBERT HAAS: So I --

MS. WATSON: They already have the entertainment license that has been granted.

ROBERT HAAS: Are you already occupying that space right now?

AMAN THEKUR: Yes, we are.

MICHAEL GARDNER: You're operating under a common victualer license and entertainment currently?

AMAN THEKUR: We're not operating currently because we're not open. But we have all the occupancy permits.

MR. GOLDBERG: He just got the

occupancy permit today.

AMAN THEKUR: And I am the manager and manage the operation of the New England restaurants in Chelmsford and in Nashua and Manchester and I am one of the managers over there, too. I have a degree in hotel and restaurant management from Southern New Hampshire University. I worked in Washington, D.C. as assistant chef to the banquet chef, and I had some food and beverage management experience back India.

ROBERT HAAS: Have you ever had a liquor license in your name before?

AMAN THEKUR: No.

ROBERT HAAS: Are you going to transfer it to this restaurant? You said you're now managing in Nashua, New Hampshire, right?

AMAN THEKUR: Chelmsford.

ROBERT HAAS: You're not going to be

able to manage both places, right?

AMAN THEKUR: No.

GERALD REARDON: Background check and everything?

MS. WATSON: Background check are here.

MICHAEL GARDNER: Could you describe, I guess, what your relationship with the landlord is, in particular, the question of whether the landlord's got any interest or rights with respect to the proposed liquor license and whether or not there's been a pledge on that or who, in fact, has got an interest in that license?

SAJAL LATKA: There's no interest per se as per the landlord is concerned, but he is financing us the money for us to purchase it. So he's not -- he's pledging the license, you know, in lieu of the financing. The license is free and clear.

ROBERT HAAS: Does he have inclusive rights in the license or do you?

SAJAL LATKA: We own. If we get the license granted, we have the rights of the license.

MICHAEL GARDNER: And the collateral for the loan then does not include any connection to the license?

SAJAL LATKA: No.

MICHAEL GARDNER: In some of the paperwork we saw, there was information that the landlord was asking for information from you about gross sales, and we at least wondered why that was a piece of information that you were obligated to provide.

SAJAL LATKA: In terms of future increase or decrease in the rent based on what we do for sales. Initial agreement when we talked to the landlord was based on CPI. Since we're operating under a new entity now

and we don't know what we gonna do for sales or not, so got a clear understanding of what we are doing for sales. We have to find out where we stand in terms of increase or decrease based on the sales.

ROBERT HAAS: Are there any conditions in the lease concerning ownership of the license if you decide to leave?

SAJAL LATKA: No.

MR. GOLDBERG: The lease, I think, and I can probably base it upon my experience relative to the landlord, is basically -- and I have a copy of it here -- is a detailed lease, but nowhere in there do I see, so far as the lease is concerned, anything relative to a pledge or assumption by the landlord of any interest in the license.

MICHAEL GARDNER: I guess our concern relates to what we understand to be Section 24, which is on Page 31 and it says

"Section 24 - Security Interest: Tenant hereby grants to landlord an unrestricted security interest in all property used and/or installed on the premises, and in all licenses obtained and/or used in connection with the tenants's use of premises, and agrees to keep all said property and licenses free of any other liens and encumbrances and to immediately execute all uniform commercial code filings and other documentation requested by landlord to protect such interests."

It sounds to me like the landlord thinks he or she has got an interest in the license.

MR. GOLDBERG: It may very well be, Mr. Chairman, but also the common victualer license would be the other license that he may an interest in, not to say that you're not incorrect with regard to that assumption.

And that is something that I refer to the president here as to the fact of execution of that lease and whether or not there was a discussion relative to that concerning an interest in the license.

Please.

SAJAL LATKA: It was discussed that there's an interest in the license before, but...

MICHAEL GARDNER: Is there any problem with presenting to us an amended lease which makes that clear? This certainly doesn't seem to conform with the representations you have made to us this evening.

MR. GOLDBERG: For clarification of that, I would certainly agree that it specifically would include no interest in the license.

ROBERT HAAS: The liquor license.

MR. GOLDBERG: The liquor license, yes. Of course I would ask them to do that and have it presented to you and signed by both parties, including the landlord.

MICHAEL GARDNER: We do have a member of the audience who raises his hand. I'd ask you to defer, sir, until we're ready to take comments from the public.

In terms of -- it sounds like you've not operated any facility like this in Cambridge before, sir, is that right?

AMAN THEKUR: Not in Cambridge.

MICHAEL GARDNER: In terms of the trainings that we require for holders of alcoholic beverages licenses --

MS. WATSON: We would attach that.

MICHAEL GARDNER: We would make that as a condition?

MS. WATSON: Yes.

MICHAEL GARDNER: Are you aware of

your requirements for training?

AMAN THEKUR: Yes.

MICHAEL GARDNER: And the only thing that's before us is the alcoholic beverages license, is that right? There's no changes in capacity or seating?

MS. WATSON: That's correct. It's just transferring the alcoholic beverages license.

GERALD REARDON: You've had your inspection, your CO was signed off?

MR. GOLDBERG: Yes.

AMAN THEKUR: Yes.

MICHAEL GARDNER: What is the occupancy?

MR. GOLDBERG: 125.

GERALD REARDON: Who is the landlord?

MR. GOLDBERG: The landlord here is Brighton Allston Properties, but I do believe

that's Raj Dhanda is the landlord.

MS. WATSON: We have the landlord as Crimson Galleria Limited Partnership.

MR. GOLDBERG: That's what it is.

MS. WATSON: Okay.

MR. GOLDBERG: That's the architect.

MICHAEL GARDNER: I would entertain a motion to -- sorry. I apologize. Thank you. I'm being reminded of my responsibilities here.

Any members of the public who would like to be heard?

RAJ DHANDA: My name is Raj Dhanda. I'm the landlord of the premises in question here. I have no interest of any type in the license. Either as lien or any other way.

The intent of the section he pointed out is outside of the liquor license, and if you need we'll -- I'll get you clarification stating that. There's no lien on liquor

license. I have no interest, and obligations to the lease are independent of the obligations of whatever he has, but those are separate from me.

ROBERT HAAS: You have no objection to clarification of the lease with respect to liquor license.

RAJ DHANDA: No.

MICHAEL GARDNER: I guess I thought I understood that you were, in fact, a lender.

RAJ DHANDA: No, I'm not. Just to be sure. Strictly a landlord.

MICHAEL GARDNER: Thank you.

MR. GOLDBERG: I have the -- in the ABCC filing, which will be presented to the ABCC so as far as it looks like the lender is Sovereign Bank.

MICHAEL GARDNER: Perhaps I misunderstood you, sir, you could clarify.

SAJAL LATKA: I said if we were to borrow money, that was the thing. We can borrow money. It's not a question of borrowing money from him or any lender. That was my clarification was any lender that we have is not going to have an interest in all the licenses.

ROBERT HAAS: When you say "all licenses," we want to make sure you --

SAJAL LATKA: We don't owe anybody any money for the license, if we need to borrow money there's no -- license won't be held as a collateral.

ROBERT HAAS: There's no loan on the liquor license right?

SAJAL LATKA: I'm trying to come up in the money, but in case I can't, then I'm going to borrow money from somebody.

GERALD REARDON: So if you can't finance it yourself, you're going to use a

bank?

SAJAL LATKA: Sovereign Bank or somebody, but license is not a collateral. No bank will take it.

ROBERT HAAS: Just make sure.

SAJAL LATKA: License is not a collateral.

MICHAEL GARDNER: I think we would feel most comfortable if the terms of the lease itself were modified to reflect the reality as opposed to some external communication that purported to be a clarification since it seemed like the lease would be controlling.

GERALD REARDON: I would make a motion to approve.

ROBERT HAAS: Anymore comments?

MICHAEL GARDNER: I think I asked for more comments.

MS. WATSON: We got one.

MICHAEL GARDNER: The Commissioner is apparently able to not only conduct a meeting, but also to keep an eye on the audience at the same time which I am not.

DENISE JILLSON: Good evening, Denise Jillson with the Harvard Business Association, and we're in support of this applicant. We're delighted to report that they're the newest members of the Harvard Business Association and, you know, it's always interesting to us when people, you know, join the association and how quickly they want to get involved.

We're working on our 1101 annual meeting coming at the end of February, and in speaking to these kind folks, you know, suggested that maybe they would like to host the 101 meeting. It's a breakfast meeting so, Commissioner, you're all be invited. They're agreed to do that and that really

shows, I think, they're willingness to immediately hit the ground running, get involved, be a good community partner and we're looking forward to working with them.

Thank you very much.

ROBERT HAAS: What does that bring you to?

DENISE JILLSON: It brings us up to 408.

MICHAEL GARDNER: Yes, please.

VIKTOR (last name unknown): My name is Viktor. I'm owner the Tamarind Bay right across the street and we welcome new neighbors to the area.

The concern I have is that just about a month ago I was in front of the Board trying to sell my license, and the question which the Board raised was that non-Harvard Square licenses cannot come to Harvard Square.

I'm wondering is Board moving away from that precedent and setting new precedents and arbitrarily just reducing the prices of licenses in Harvard Square as to full licenses for sale which the Board knows of and we know of or is this something --

GERALD REARDON: That's a capped area. And was Guido's in a capped area?

MS. WATSON: Not a capped area.

VIKTOR (last name unknown): We know there are three or four other licenses for sale in Harvard, Square including mine, which I was in the progress of negotiating, so it's something which the Board has changed or --

MS. WATSON: No.

MICHAEL GARDNER: Well, we certainly have not taken any action.

MS. WATSON: They have to exhaust all.

MICHAEL GARDNER: We'll hear from

another member of the public.

SOLOMON CHOWDHURY: Solomon Chowdhury, owner of Om Restaurant and Lounge in Harvard Square. Unfortunately, actually we have the same lender and two issues that I wanted to bring up. Five years ago when I opened my restaurant, I had to purchase my liquor license for \$250,000 with 93 seats because it was in a capped area. And we couldn't operate with 93 seats, and I was forced to buy 100 seats additionally for another \$100,000 from our neighbor and it ended up costing \$350,000 for my license that's in a capped area because it's in a capped area.

I'm trying to sell my license. Also the second -- the other issue is the same issue came through at the beginning of signing of my lease and somehow the pledge on my license was tied up with my lease and the

liquor license, and it was approved by the License Commission, I'm sure all of you know about this whole situation.

So far, I have spent about \$250,000 defending my lease and liquor license. The landlord is trying to sell the restaurant, he doesn't know because he thinks he has interest on the liquor license and the lease.

So going back to the cap area, I was forced to buy my license, to spend \$350,000 for my license and it's not only going to bring the value of my license, but I also have to compete with someone who is bringing a license from outside of cap area, that's not fair to other restaurant owners in the area and the license holder and there's a lot of other establishment that they purchased their licenses for much more and they also have to compete with the same license now. I don't think that's fair. That should be

either if you guys are moving away from keeping the cap area, then there should be some incentive that's offered to us for forcing us to buy high priced licenses or, you know, until all the licenses in Harvard Square that sells, then maybe there should be an opportunity to allow to bring licenses from outside. As far as I know, there's three or four licenses for sale, including mine. There's Conga's license that they have been trying to sell for a long time. Conga's been trying to sell theirs for a long time.

GERALD REARDON: The one originally from Bombay as well?

SOLOMON CHOWDHURY: Exactly.

AMAN THEKUR: That was sold.

SOLOMON CHOWDHURY: I know they got into an agreement, I'm not sure if it was ever approved.

MS. WATSON: He's here, so ask him.

SOLOMON CHOWDHURY: I'm really glad that you guys are paying close attention to the lease, so business owners, like me, don't suffer later on. I really appreciate that.

Thank you.

MICHAEL GARDNER: Thank you.

MS. WATSON: Policy was amended in 2000, but it says "An applicant may apply to break the cap as a last resort after every effort to purchase an existing license is exhausted." They would have to present proof that that's been done.

MICHAEL GARDNER: Are any other members of the public who would like to be heard on this matter?

KEVIN CRANE: Attorney Kevin Crane, 104 Mount Auburn Street in Cambridge, I represent the seller, Guido's Bar and Grill, Inc., and we're not giving the license away. It has been sold for \$110,000. I would point

out to the Board that I know of at least one precedent in the last year or so where a license outside Harvard Square, the Cambridge Port Salon license, which was held inactive for many years, was transferred to the Print or whatever it's going to be called, on Dunster Street, which is the Kathleen Morgan Manor in Harvard Square, that was transferred from Central Square to Dunster Street in the past year, and that went from one capped area to another and it seemed that the Board was certainly looking at being more flexible with the cap policy even to the point where I noticed even in the legal ad now we're not putting down that that location is in a capped area.

MS. WATSON: Cap to cap licenses transfers will be considered when there are available licenses in other capped areas. So that's addressed in the cap issues separately

from when it comes from an uncapped area into a capped area.

KEVIN CRANE: We're keeping the price down. I don't know why these other guys paid so much money for it.

MICHAEL GARDNER: Thank you very much.

We have another comment from Ms. Jillson. Would you like to step up to be heard?

DENISE JILLSON: Just that even before this -- that Kevin spoke about Roca which was outside of the cap area came to Harvard Square, it was performed by Wagamama. I think that was done in probably in 2006. So, there is precedent, and I do understand many of our members, if they have a license, they want to be able to sell that license. I know the Conga license is something that you guys have dealt with for years, I'm not

really sure what the deal is with that one. And there may be others. But it would be interesting to know whether or not they have exhausted their negotiations with some of these others, but there certainly is precedent for taking a license outside of a capped area and bringing it to Harvard Square as far as that.

Kevin, do you think that was 2006 when that happened?

KEVIN CRANE: I'm not sure.

DENISE JILLSON: I think it's.

GERALD REARDON: There have been cases there wasn't anything available and they have taken a noncap as well.

DENISE JILLSON: Yeah, exactly, exactly.

GERALD REARDON: I don't know what the situation was.

DENISE JILLSON: The two things the

Commission has looked at in the past was the availability and also the opportunity for the negotiation, and certainly, we would like to see that exhausted. But sometimes it's just not possible. I'm not sure where these guys stand on that, but it also needs to be, as Kevin said, I think it needs to be reasonable, and certainly, one of the reasons that the Commission looked at the whole idea of the capped and also the no-value nontransferable for a fee, beer and wine licenses were that, as Solomon indicated, just incredible amounts of money were being spent for a beer and wine license in a capped area. So they were being artificially inflated, the value of it, and I think what really brought the whole thing to a head was with Conundrum, as you may remember Conundrum was in the square and they purchased a license for -- correct me if I'm wrong -- but

it was somewhere around 250,000 for a beer and wine license for which they took a second mortgage on the home and in 11 months they went belly-up and the young couple lost their house, and at that point, it became clear that something needed to be done and, you know, Councilor Reeves worked very closely with Bob Healey, and there was a whole study group put together and worked on the issue for months and months which resulted in the new bylaws.

So I mean there's a lot of history. It's sometimes is not fair, but I think that, you know, to penalize a new operator who has been able to fairly negotiate a license needs to be really looked at carefully because there are reasons for all of this. At some point it's not fair. I think they're trying to correct a situation that was slightly out of control. Thank you.

MICHAEL GARDNER: Thank you. Any other comments from the members of the public?

(No response.)

I wonder, sir, if you could address the issue of the language in the License Commission rules and regulations with respect to exhaustion of search or negotiation before taking a license from outside the cap area and just tell us about what you have done with respect to compliance with that provision.

MR. GOLDBERG: Well, what I have observed, Mr. Chairman, and members of the Board is the fact that, as Ms. Jillson said, to purchase a license at Harvard Square is almost financially impossible. You're heard Solomon Chowdhury indicate what he is looking for by way of his license. He has a figure placed upon him of \$350,000. If you were to

ask the owner of Bombay who just sold his license to a Korean restaurant -- the name escapes my mind right now -- and that license went for over \$200,000. So, as is indicated here, that is prohibitive. We know exactly what is available in Harvard Square and the price range difference, but I've given you two examples, one, that has recently been transferred, and the other which is up for sale by Solomon Chowdhury.

And those prices are exorbitant and now we're having -- we're not paying zero for it, but we're paying over \$100,000 for this license, which is not, so to speak, peanuts.

But in Harvard Square, if I may say so, the pricing there is prohibitive, and therefore, we have exhausted our opportunity within the square itself, and that's why we have gone outside of the cap to bring it in.

MICHAEL GARDNER: Isn't the net

effect of this action to increase the number of licensed premises in the capped area by one?

MR. GOLDBERG: Well, it has been done. Certainly we're increasing it by one, but that is not impinging, in my opinion, upon the operation of the all alcoholic licenses in Harvard Square which -- which everyone seems to be doing very, very well with their license.

And so, what we're doing here is, so to speak, taking from one cap into another cap without impinging upon the people -- the owners of all alcoholic licenses who have a license which no one can buy, in my opinion.

ROBERT HAAS: Guido's is not in a capped area, though.

MR. GOLDBERG: No, that's right. Guido's is not, it's outside of any capped area whatsoever. Thank you.

If I may, and it's not deference to the people who spoke, because I know both of them, and at one time, I represented one of them, but -- and they have differences with -- Solomon has differences with his landlord, and I understand those differences, and he could explain those differences, but that goes back several years, at which time Om was operating effectively and wisely.

But at this moment in time because of his operation, he has brought suit against the landlord. The landlord has brought suit against him. I don't want to go into those differences, but I suggest to you that that may be a reason for their objection to this transfer.

With regard to Indica doing business as Tamarind, most recently I represented Wagamama, in which wanted an all alcoholic license, and were able to negotiate with

Indica doing business as Tamarind with regard to a transfer of those licenses. Indica is beneficiary of a beer and wine license and Wagamama is a beneficiary of a all alcoholic license, so both parties came out of that transaction satisfactorily.

And we're not taking anything from Tamarind, we're just bringing in another Indian restaurant and Tamarind is an Indian restaurant, if you will. And maybe that is his objection. I don't know.

But, nonetheless, we feel this is a transfer that the Board should accept and grant and I trust that we have made the case for them.

MICHAEL GARDNER: I guess I feel disadvantaged by a lack of history and understanding.

MR. GOLDBERG: Understandably so and I didn't mean to bring that up.

MICHAEL GARDNER: Not with respect to how the cap has been interpreted and understood and in particular with regard to how the language about the exhaustion of alternatives has been understood and applied.

MR. GOLDBERG: No, and I don't --

MICHAEL GARDNER: And I regret that that's my problem, but it transfers to you.

MR. GOLDBERG: Understandably so, and I just go back in history that I'm aware of, and as the Councilor indicated, there have been transfers in -- from one cap to the other cap.

Here we're not transferring from one cap, which is a restriction, to another area that has a cap.

MICHAEL GARDNER: Well, you're moving from an uncapped to a capped which presumably has both economic and usage cultural impacts whatever the purpose of the

cap was in the first place.

GERALD REARDON: Aside from your clients, which we have to take the names and faces out this, I don't know how we get around the language there unless we look at this carefully in terms of the laws and regulations, which we have to operate under and how it spells it out.

So, as I try to deal with all my dealings in all my positions, names and faces -- it's very nice that these gentlemen are trying to do this and we would like to help them, but the issue is going to be how do we get around the issue of status of exhausting caps and what exactly does exhausting caps -- exhausting available licenses mean, and understanding that the people who paid a lot of money for them, obviously, even if it was \$200,000 would be happy with the competition paying only \$100,000 for their license as

opposed to economic issues.

And so I understand all the sides to this, but the question's going to be in terms of the way that the cap policy was amended that we work under, how do we justify that?

MICHAEL GARDNER: There's a comment from the back that we would hear.

Just state your name, please?

GEORGE GIBSON: George Gibson. I am the broker for this license.

In the process of trying to get all this together, I did a little research going back a couple years on licenses transferred in the city. I understand the cap issue, but I would like to bring up that Flat Patties -- I'm sorry, I can't remember the name of the food truck that just opened on Holyoke Street --

DENISE JILLSON: Clover.

GEORGE GIBSON: Clover. No problem

getting beer and wine licenses in a capped area, pre-beer and wine licenses in a capped area.

These gentlemen did try to buy the Bombay Club license, there were issues between the landlord, the seller these things happen, but that license went into the basement of the building where there had been a beer and wine license.

This is going again into a place that there was a full liquor license. We tried to find them a license. There are licenses out there. I know available supposedly, offers, I never heard anybody bring up an issue of buying it. I believe there's one for the brewery that used to be Church Street, but, again, I never hear anything about it being available to anybody.

We're not trying to circumvent a cap, we're just trying to get these guys in

business.

That's all, and there have -- you know, Solomon brought up Conga. Yeah, Conga's available if you want to buy the whole business, they're not selling the license. And I also think that that may have come from an uncapped area into Harvard Square. I think it may have -- I can't remember exactly, but I don't think it was bought from -- in Harvard Square.

GERALD REARDON: But, again, it could have been a period of time where nothing was available in Harvard Square and could have come in. I'm not saying that's the case.

MS. WATSON: Cap to cap.

GEORGE GIBSON: These ones that are available, we never hear about them. They're a ghost. Find me the people to talk to, I'll talk to them.

MS. WATSON: We have them in the office.

GEORGE GIBSON: We call the -- all the time, I know about them. I mean, Marino's, hey, Marino's is 300 people. That's not going to work in their space.

MICHAEL GARDNER: So let me suggest that we defer action on this application until the decision meeting which is February 3. And that, in the meantime, we invite any interested parties to provide written comment, analysis, historical perspective, any information that anyone who is interested feels is helpful or useful to the Board in making its decision, to please do so.

KEVIN CRANE: Mr. Chairman, just I think the legislative history-wise, on the uncapped to capped areas, I don't think that was ever an issue when the cap policy was

initially enacted. And the thing that's changed now is you go from -- you can at least apply for cap to cap. Whether it's cap to cap or uncap to cap, you're still getting one more license, as you say, in an area that is capped, so it doesn't make any difference, I don't think policy-wise and was never really the focus of the cap policy to address situations at least in a negative way as far as going from an uncapped to a capped area.

Thank you.

MICHAEL GARDNER: I think -- an elaboration of those comments, if you're so interested, would be helpful and useful at least in trying to help us with respect to reaching a decision here.

MS. WATSON: I ask that be directed to Ms. Lint.

MICHAEL GARDNER: Yes, to the License Commission, attention Ms. Lint?

MS. WATSON: Yes.

KEVIN CRANE: If that wasn't the case, anyone holding a license in an uncapped area, they would never be sell it. The city is practically all capped anyway.

MICHAEL GARDNER: We spent a lot of time on this matter, but I will recognize the speaker who has asked to be heard again. If you would please identify yourself.

SOLOMON CHOWDHURY: Solomon Chowdhury, owner the Om Restaurant and Lounge. I have been to many of the recent hearing. I had a purchase and sale agreement negotiated with to Bull Barbecue to sell my liquor license, and for some reason, they backed out.

We verbally negotiated to sell my license to them and they backed out. I'm at a hearing, I'm publically saying that my license is for sale, so if that's -- if

anybody else is looking for licenses in Harvard Square, I have mine for sale. I want to sell my license. There's other licenses that I know I can buy and all I want to do is sell my license, buy another one from somebody else so I can just pay off my landlord for the pledge that's on the liquor license. That's my whole purpose, and I never set a price of \$350,000. I'll sell it for at somewhere in the low 2s, so I can just get out of this mess.

ROBERT HAAS: But there was a negotiation between you and the current applicant.

SOLOMON CHOWDHURY: We had a verbal negotiation, not only that, but the previous other tenant that's in the building, I had a purchase and sale agreement that was executed.

ROBERT HAAS: But you two couldn't

reach an agreement on the purchase price of the license.

SOLOMON CHOWDHURY: No, because their intention was to bring the license from uncapped area to Harvard Square. There's recently license sold for \$250 and \$225, so if that's the price ranges in Harvard Square and that's how much I'm looking for to sell my license for.

So I'm not looking for \$350,000 even though that's how much I paid, I'm willing to take -- sell it for less. Back then it was capped and enforced more strictly.

GERALD REARDON: Which license is this for?

SOLOMON CHOWDHURY: Om Restaurant. There's other licenses in Harvard Square that I could purchase from and bring it to Om. So if they -- they're saying they did their homework, they didn't because I'm capable of

buying a license in Harvard Square from someone else.

MICHAEL GARDNER: Let me hear from the manager, the prospective manager.

AMAN THEKUR: With respect to Mr. Chowdhury, what we heard is that he has issues with his license with the landlord, so we didn't want to get into that, so I'm not sure what he's talking about in that case.

MICHAEL GARDNER: I'm not sure we want to conduct public negotiations here either.

Sir.

VIKTOR (last name unknown): Viktor from Tamarind Bay. I just wanted to clarify his comment he made on the license. Attorney represented the seller for Wagamama which actually has not closed as of yet, it still has a purchase and sale agreement but the license has not transferred. It's under

advisement with ABCC, but when I asked the attorney how much Wagamama selling their beer and wine license for, they categorically told me \$100,000, take it or leave it, at which point I came up with my price of \$200,000. That's the price which was established by the sellers, not by me. I wanted to make that clear.

I also want to get a list what other licenses are for sale in Harvard Square.

MS. WATSON: See Christopher O'Neil in the office, he'll give you --

VIKTOR (last name unknown): So there are more than one.

MS. WATSON: Well, he'll give you the list of anything that's -- that he knows available in the city. We don't break it down by cap.

MICHAEL GARDNER: Sir, please come up and state your name again.

RAJ DHANDA: Raj Dhandra from Crimson Galleria. A couple comments. The license of Wagamama is actually being exchanged, the Wagamama is paying \$200,000, and \$100,000 is the net difference. It's not \$200,000. Number two, as for Mr. Chowdhury, I don't know how he would be conducting his business if he has no liquor license at Om, if he wants to sell. If he thinks he can buy something cheaper, it would be the same thing that somebody else could buy cheaper. I'm not sure how that equation works.

Finally, these folks have spent a fortune trying to get a beautiful restaurant ready, and they're ready to open, and if the liquor license -- if you folks do not want to approve his application for a liquor license, perhaps he could get a no-value license, nontransferable for beer and wine.

MICHAEL GARDNER: Thank you very

much. It's a complicated matter.

Again, I think the Commission would benefit from any written materials that any of the interested parties would seek to submit to us.

ROBERT HAAS: I make a motion to take the matter under advisement.

GERALD REARDON: Seconded.

MICHAEL GARDNER: All those in favor, please say "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: Opposed say "no."

(No response.)

APPLICATION: TWO GUYS FOODS, INC. D/B/A
BURGER KING

MS. WATSON: The next application is Two Guys Foods, Inc., d/b/a Burger King, Maria Perdoma, manager, has applied for a

common victualer license to be exercised at 100 Cambridgeside Place, Cambridgeside Galleria, the hours of operation would be the food court hours. Good evening.

JAY WHITE: Jay White. Good evening.

MICHAEL GARDNER: Good evening. Just please tell us why you're here.

JAY WHITE: I'm here for a CV license for the Burger King inside the Cambridgeside Galleria Mall.

MICHAEL GARDNER: Your role?

JAY WHITE: I'm one of the owners of Two Guys Foods.

MICHAEL GARDNER: I think what we understand is that the business got transferred awhile ago and you actually have been operating under someone else's license for some time. I don't know if that information is correct or not.

JAY WHITE: We assumed ownership of the restaurant in March, and when we approached the mall about licensing and specifically the CV license, they told us that they took care of everything and I think that it was probably a mistake on my part to make that assumption, and I apologize.

Since we found out that that wasn't the case, I came down here to this building and made the application, and so forth, and spoke to Chris, and in the meantime, I got a letter from -- he asked me to get a letter from the previous owner that said he allowed us to operate under his license until we were able to get the new one. I'm sorry. It was a mistake that I apologize for.

MS. WATSON: His is a unique setup because the mall owner applies for all the seats and then each of the vendors has common victualer license without seats.

GERALD REARDON: It's also a little strange in that we give them some blanket permits because of the number of people coming and going and stuff at the mall in terms of some of the construction and others where the pull for the year, so I can see where it potentially got confusing.

MICHAEL GARDNER: My interest is mostly in the ways in which we can try to change things to avoid this kind of problem in the future. So I don't know if you have any insights or thought about that.

JAY WHITE: I hadn't thought about that. This situation. This situation also occurred for us, we took over a company that operated five restaurants, five Burger Kings and one of them was in Watertown and they were unhappy with the fact that we were neglectful in that situation also. It was a little bit of a different situation. We were

really neglectful there. And they put us on probation for six months, and if there were any problems that we would've had to, I guess -- they would have considered not granting us a license.

ROBERT HAAS: Have you passed your probationary period.

JAY WHITE: Yes. I'd have to think about that. I really don't have an answer right now.

GERALD REARDON: I guess the better answer would be is that we can just make notification to the mall.

ROBERT HAAS: They have to be sure that they understand the transfer.

JAY WHITE: We operate restaurants in Boston, and typically, the Police Department goes around and inspects the licenses, so I don't know what the procedure is here.

As was mentioned, it's a little bit of a unique situation and we were kinda relieved because when the mall said that they took care of everything, we -- I think we should have been a little more aggressive or checked things better, so I apologize and...

MICHAEL GARDNER: Who pays the fees? Are the fees up to date?

MS. WATSON: Yes. The mall pays the fees.

MICHAEL GARDNER: Which partly explains --

MS. WATSON: Which partly explains it and each of the vendors is responsible for updating the management information each year and signing that the taxes are paid.

ROBERT HAAS: So you know you have future reporting obligations?

JAY WHITE: Yes, sir.

GERALD REARDON: How long have you

been open now?

JAY WHITE: We took over in March.

MICHAEL GARDNER: Any other questions?

GERALD REARDON: Seeing there's no public out there, I guess we could --

MICHAEL GARDNER: I ask if there's any members of the public that would like to be heard? Hearing and seeing none, the pleasure of the Commission?

ROBERT HAAS: Make a motion to approve.

GERALD REARDON: Seconded.

MICHAEL GARDNER: All those in favor please say "aye."

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: Thank you. Good luck.

RATIFICATIONS

MS. WATSON: The last thing is
taxicab ratifications:

Medallion No. 95, refinance, Jessica
Cab, Inc., debtor; Mercantile Bank, creditor.

Medallion No. 117, refinance,
Andrew J. Cab, Inc., debtor; Medallion Bank,
creditor.

Medallion No. 62, refinance,
Christophers Cab, Inc., debtor; Medallion
Bank, creditor.

Medallion No. 17, refinance, Ohm
Shiva Ganesh Cab, debtor; Progressive Credit
Union, creditor.

Medallion No. 50, refinance, Parvati
Cab, Inc., debtor; Progressive Credit Union,
creditor.

Medallion No. 147, refinance, Gurn
Tegh Bhadar Cab, debtor; Progressive Credit

Union, creditor.

Medallion No. 148, refinance, Guru Gobind Cab, debtor; Progressive Credit Union, creditor.

Medallion No. 105, refinance, Jeremie Taxi, Inc., debtor; Mercantile Bank & Trust, creditor.

And that's it.

ROBERT HAAS: All work is in order?

MS. WATSON: They are.

ROBERT HAAS: Make a motion to accept.

GERALD REARDON: Second.

MICHAEL GARDNER: All those in favor, please say "aye."

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: Opposed "no."

The ayes have it. So ordered.

Thank you.

MICHAEL GARDNER: Make a motion
to --

GERALD REARDON: Adjourn.

MICHAEL GARDNER: All those in
favor, please say "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

(Whereupon the meeting was
adjourned at 8:40 p.m.)

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, ss.

I, Jill Kourafas, Certified Shorthand Reporter and Notary Public duly commissioned and qualified in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing record, Pages 1 through 191, is a complete, accurate and true transcription of my stenographic notes taken in the aforementioned matter to the best of my skills and ability.

In Witness Whereof, I have hereunto set my hand and affixed my seal this 17th day of January 2010.

Notary Public
My Commission Expires:
February 26, 2010

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\$	<p>13 ^[1] - 136:14</p> <p>130 ^[2] - 2:13, 65:12</p> <p>134 ^[1] - 121:7</p> <p>136 ^[1] - 2:15</p> <p>145 ^[2] - 65:6, 129:16</p> <p>147 ^[1] - 188:18</p> <p>148 ^[1] - 189:1</p> <p>15 ^[4] - 29:12, 95:8, 110:13, 136:14</p> <p>165 ^[1] - 86:18</p> <p>16th ^[1] - 48:19</p> <p>17 ^[1] - 188:12</p> <p>171 ^[1] - 65:7</p> <p>175 ^[1] - 65:6</p> <p>17th ^[2] - 48:20, 191:8</p> <p>18 ^[1] - 30:10</p> <p>181 ^[1] - 2:16</p> <p>188 ^[1] - 2:17</p> <p>18th ^[1] - 48:19</p> <p>190 ^[1] - 120:18</p> <p>191 ^[1] - 191:4</p> <p>1st ^[1] - 47:15</p>	<p>25th ^[1] - 42:7</p> <p>26 ^[5] - 14:4, 17:13, 66:16, 80:18, 191:11</p> <p>289 ^[1] - 116:3</p> <p>2s ^[1] - 176:10</p>	<p>130:15, 133:15</p> <p>500s ^[1] - 130:18</p> <p>52A-52B ^[1] - 5:20</p> <p>57 ^[5] - 136:10, 136:15, 137:3, 137:13, 138:4</p> <p>59 ^[2] - 65:3, 66:5</p>	<p>136:16</p> <p>AARON ^[15] - 121:6, 121:11, 122:16, 123:2, 123:7, 123:11, 123:15, 124:11, 124:20, 125:6, 126:5, 127:5, 127:10, 128:4, 128:12</p> <p>aARON ^[1] - 129:2</p> <p>Aaron ^[2] - 120:16, 121:6</p> <p>abate ^[1] - 30:1</p> <p>ABC ^[1] - 11:10</p> <p>ABCC ^[3] - 148:16, 148:17, 179:1</p> <p>abeyance ^[2] - 58:8, 104:20</p> <p>abide ^[1] - 14:2</p> <p>ability ^[1] - 191:6</p> <p>able ^[12] - 30:5, 55:4, 56:10, 77:9, 90:17, 96:15, 140:1, 151:2, 159:18, 162:15, 166:20, 183:15</p> <p>aboveground ^[3] - 129:19, 130:1, 132:16</p> <p>absolutely ^[4] - 95:12, 96:19, 101:7, 112:9</p> <p>absorbing ^[1] - 103:17</p> <p>abutters ^[2] - 113:5, 113:7</p> <p>accept ^[2] - 167:13, 189:11</p> <p>acceptable ^[1] - 24:16</p> <p>access ^[11] - 39:15, 67:20, 68:19, 78:16, 79:2, 83:6, 83:9, 83:10, 83:11, 85:11, 104:9</p> <p>accessibility ^[1] - 84:6</p> <p>accessible ^[1] - 69:6</p> <p>according ^[2] - 11:20, 29:6</p> <p>accurate ^[3] - 72:1, 82:18, 191:5</p> <p>Ace ^[13] - 14:3, 21:15, 23:18, 24:1, 24:11, 33:1, 33:3, 33:5, 33:6, 33:8, 33:14, 33:18</p> <p>ACE ^[1] - 14:7</p> <p>Act ^[1] - 109:19</p> <p>act ^[2] - 13:17, 127:11</p> <p>acting ^[1] - 80:17</p> <p>action ^[4] - 25:9, 153:17, 165:1, 173:8</p> <p>actions ^[1] - 28:3</p> <p>active ^[3] - 51:18,</p>				
0	2	<p>3</p> <p>3 ^[13] - 6:4, 8:5, 8:17, 11:2, 16:13, 16:17, 16:18, 22:1, 23:3, 25:18, 29:12, 59:6, 173:10</p> <p>3/26/10 ^[2] - 38:9, 38:11</p> <p>30 ^[2] - 65:6, 65:7</p> <p>300 ^[1] - 173:5</p> <p>31 ^[4] - 7:11, 16:7, 22:3, 142:20</p> <p>315 ^[4] - 87:1, 97:8, 97:9, 98:8</p> <p>31st ^[2] - 16:11, 20:4</p> <p>32 ^[3] - 86:20, 97:16</p> <p>326 ^[1] - 43:15</p> <p>350 ^[1] - 59:19</p> <p>3rd ^[12] - 8:2, 14:3, 16:3, 16:10, 20:19, 29:18, 58:5, 59:8, 59:11, 77:11, 85:3, 85:18</p>	6	<p>6 ^[3] - 96:10, 108:12, 115:19</p> <p>60 ^[1] - 91:5</p> <p>617.639.0396 ^[1] - 1:18</p> <p>617.786.7783/FAX ^[1] - 1:18</p> <p>62 ^[1] - 188:9</p> <p>620 ^[2] - 108:15, 136:19</p> <p>64 ^[1] - 2:6</p> <p>691-697 ^[2] - 108:7, 109:12</p> <p>6:00 ^[3] - 1:15, 28:8, 112:15</p> <p>6:01 ^[1] - 3:4</p> <p>6th ^[1] - 49:6</p>	<p>2 ^[7] - 2:13, 11:1, 86:17, 109:8, 129:5, 129:10, 129:12</p> <p>20 ^[10] - 29:12, 73:20, 91:3, 108:11, 110:13, 115:18, 121:3, 122:14, 122:20</p> <p>2000 ^[1] - 157:8</p> <p>2003 ^[1] - 10:9</p> <p>2005 ^[2] - 92:6, 92:7</p> <p>2006 ^[2] - 159:16, 160:9</p> <p>2008 ^[1] - 10:9</p> <p>2009 ^[3] - 10:9, 47:17, 47:18</p> <p>201 ^[1] - 65:7</p> <p>2010 ^[13] - 3:14, 6:4, 8:17, 9:13, 9:16, 10:11, 10:14, 11:13, 14:4, 22:1, 47:16, 191:8, 191:11</p> <p>2011 ^[5] - 1:14, 3:4, 55:10, 55:12, 57:13</p> <p>212 ^[2] - 97:13, 98:3</p> <p>221 ^[3] - 86:18, 97:8, 97:10</p> <p>227 ^[1] - 109:3</p> <p>23 ^[1] - 9:13</p> <p>24 ^[7] - 30:10, 52:19, 86:19, 97:15, 97:17, 142:20, 143:1</p> <p>25 ^[2] - 92:7, 98:7</p> <p>250 ^[2] - 103:6, 103:8</p> <p>250,000 ^[1] - 162:1</p>			
1	4	5	7	<p>1 ^[5] - 10:16, 86:15, 125:7, 191:4</p> <p>1,000 ^[1] - 133:8</p> <p>1,450 ^[1] - 129:17</p> <p>10 ^[3] - 21:9, 34:7, 39:4</p> <p>10/31 ^[1] - 9:14</p> <p>10/31/2010 ^[1] - 22:4</p> <p>100 ^[2] - 154:11, 182:2</p> <p>1008 ^[1] - 116:11</p> <p>101 ^[1] - 151:18</p> <p>104 ^[1] - 157:17</p> <p>105 ^[1] - 189:4</p> <p>108 ^[1] - 2:9</p> <p>1093 ^[1] - 115:14</p> <p>10:00 ^[1] - 118:1</p> <p>10th ^[2] - 9:1, 16:3</p> <p>11 ^[7] - 1:14, 3:4, 86:15, 86:17, 108:12, 115:19, 162:3</p> <p>11/3 ^[2] - 8:1, 12:10</p> <p>1101 ^[1] - 151:14</p> <p>1105 ^[1] - 42:16</p> <p>115 ^[1] - 2:10</p> <p>117 ^[1] - 188:6</p> <p>11:00 ^[1] - 112:15</p> <p>11:30 ^[2] - 136:16, 136:17</p> <p>12/30/2009 ^[1] - 9:12</p> <p>120 ^[1] - 2:12</p> <p>125 ^[1] - 146:16</p>	<p>4 ^[4] - 10:14, 11:5, 35:3, 37:10</p> <p>408 ^[1] - 152:9</p> <p>42 ^[1] - 2:5</p> <p>450 ^[3] - 86:13, 88:3, 88:4</p> <p>48 ^[3] - 51:4, 51:6, 126:7</p> <p>48-month ^[1] - 52:20</p> <p>480 ^[1] - 98:13</p> <p>4:00 ^[1] - 78:10</p> <p>4th ^[6] - 4:3, 4:7, 33:19, 34:1, 34:16, 37:13</p>	<p>5 ^[5] - 2:3, 12:16, 14:13, 28:16, 39:8</p> <p>50 ^[3] - 129:13, 129:19, 188:15</p> <p>50-gallon ^[2] - 133:2, 133:4</p> <p>500 ^[4] - 129:14, 129:18, 130:18, 131:1</p> <p>500-gallon ^[3] - 130:1,</p>	<p>7 ^[3] - 120:20, 121:1</p> <p>7:00 ^[3] - 128:8</p> <p>7th ^[1] - 49:5</p>	<p style="text-align: center;">8</p> <p>831 ^[2] - 1:12, 3:6</p> <p>86 ^[1] - 2:7</p> <p>8:00 ^[1] - 121:20</p> <p>8:40 ^[1] - 190:9</p>
	6	9	A	<p>a.m ^[9] - 86:15, 86:17, 108:12, 115:19, 120:20, 121:1,</p>				

<p>53:7, 106:19 actual [2] - 23:11, 56:6 ad [1] - 158:14 ADA [1] - 67:17 Adams [1] - 65:12 add [4] - 10:15, 35:16, 70:11, 130:1 added [1] - 130:15 adding [2] - 79:11, 79:17 additional [6] - 36:10, 37:8, 67:3, 97:9, 130:15, 132:8 additionally [1] - 154:11 address [9] - 68:16, 80:1, 85:10, 102:11, 108:19, 109:3, 109:7, 163:5, 174:8 addressed [1] - 158:20 adequacy [1] - 84:5 adequate [1] - 74:12 adjacent [3] - 81:6, 88:7, 98:16 adjoining [2] - 69:12, 94:13 adjourn [1] - 190:3 adjourned [1] - 190:9 adopting [1] - 83:1 adverse [1] - 85:5 adversely [1] - 20:11 advertise [1] - 55:15 advisement [5] - 37:4, 84:15, 85:9, 179:1, 181:7 affected [1] - 20:11 affiliation [1] - 43:4 affixed [1] - 191:8 affordable [1] - 96:7 mentioned [1] - 191:6 agenda [2] - 4:11, 42:4 AGENDA [2] - 2:1, 2:2 agents [1] - 63:17 aggressive [1] - 186:4 ago [7] - 24:18, 49:4, 73:20, 130:14, 152:16, 154:6, 182:17 agree [1] - 144:17 agreed [3] - 8:1, 82:9, 151:20 agreement [7] - 58:11, 141:18, 156:18, 175:13, 176:18, 177:1, 178:19 agrees [1] - 143:7 ahead [1] - 112:1</p>	<p>alarm [2] - 45:17, 70:6 alcohol [1] - 118:7 alcoholic [15] - 5:19, 65:2, 86:10, 108:9, 115:16, 118:5, 136:12, 138:2, 145:15, 146:4, 146:8, 165:7, 165:14, 166:19, 167:4 alerted [1] - 79:3 Alewife [1] - 88:2 Allen [1] - 65:13 alleyway [1] - 94:12 allow [9] - 66:16, 67:4, 81:14, 90:16, 98:10, 108:8, 115:15, 138:6, 156:7 allowed [2] - 25:14, 183:13 allows [2] - 98:5, 98:8 Allston [1] - 146:20 almost [2] - 46:18, 163:17 alterations [1] - 109:14 alternate [1] - 87:1 alternative [1] - 97:18 alternatives [1] - 168:5 Aman [2] - 136:8, 137:1 AMAN [13] - 137:1, 137:2, 138:13, 138:17, 139:2, 139:14, 139:19, 140:2, 145:12, 146:2, 146:13, 156:16, 178:5 ambulance [4] - 13:2, 13:9, 13:11, 16:5 amend [3] - 66:13, 129:11, 130:14 amended [6] - 130:19, 131:5, 132:5, 144:11, 157:7, 170:4 amendment [3] - 80:13, 129:20, 132:6 amenity [1] - 89:8 Americans [1] - 109:18 amount [4] - 104:6, 104:11, 104:13, 131:16 amounts [1] - 161:13 ample [1] - 26:8 amplification [1] - 87:7 analysis [1] - 173:12 and.. [3] - 75:19,</p>	<p>107:11, 186:5 AND/OR [1] - 191:15 Andover [1] - 121:7 Andrew [1] - 188:7 Andy [1] - 87:19 announce [1] - 42:2 annual [1] - 151:14 Ansul [11] - 12:18, 13:4, 13:16, 14:8, 16:15, 17:1, 21:12, 23:14, 24:14, 30:18, 32:7 answer [4] - 46:7, 67:6, 185:9, 185:12 answers [1] - 38:9 anticipated [1] - 121:13 Antonio [2] - 115:12, 116:3 ANTONIO [13] - 116:3, 116:7, 116:11, 117:5, 117:12, 117:15, 118:2, 118:6, 118:10, 118:13, 118:19, 119:4, 119:7 ANY [2] - 191:14, 191:14 anyway [2] - 80:19, 175:5 apologize [4] - 147:8, 183:7, 183:16, 186:5 apparent [1] - 124:10 appeal [1] - 11:9 appear [3] - 8:7, 39:7, 87:16 appearing [1] - 65:13 appliance [1] - 30:13 appliances [1] - 20:10 applicant [7] - 37:6, 87:4, 108:17, 121:2, 151:8, 157:8, 176:14 applicants [1] - 80:5 application [23] - 44:15, 57:15, 60:2, 64:19, 78:11, 81:2, 82:13, 86:8, 87:20, 89:10, 105:12, 105:17, 106:18, 107:9, 108:4, 115:10, 126:8, 128:7, 136:7, 173:8, 180:17, 181:18, 183:10 Application [2] - 120:15, 129:9 APPLICATION [15] - 2:6, 2:7, 2:8, 2:10, 2:11, 2:13, 2:14, 2:16, 64:16, 86:6,</p>	<p>107:20, 120:12, 129:4, 136:4, 181:16 applied [15] - 44:5, 46:4, 48:11, 61:18, 65:4, 86:10, 89:12, 108:5, 115:12, 120:19, 122:20, 129:11, 136:11, 168:5, 181:20 applies [1] - 183:18 APPLY [1] - 191:14 apply [5] - 42:17, 48:14, 55:13, 157:8, 174:3 applying [2] - 87:4, 121:2 appreciate [2] - 68:2, 157:4 approach [1] - 83:3 approached [1] - 183:3 appropriate [3] - 58:6, 68:17, 82:5 approval [5] - 67:9, 80:19, 84:1, 104:7, 137:20 approve [14] - 4:13, 4:18, 11:3, 46:12, 80:18, 107:9, 114:12, 119:20, 120:3, 127:16, 135:15, 150:16, 180:17, 187:11 approved [5] - 4:14, 113:19, 122:5, 155:1, 156:19 approving [1] - 114:15 April [1] - 125:7 arbitrarily [1] - 153:3 architect [4] - 75:14, 84:2, 87:19, 147:6 architects [2] - 68:9, 81:11 area [50] - 61:12, 61:13, 65:5, 70:2, 70:17, 71:6, 71:9, 72:20, 73:2, 74:20, 75:1, 94:5, 97:20, 98:2, 98:10, 98:11, 124:1, 124:7, 124:13, 152:14, 153:8, 153:9, 154:9, 154:14, 154:15, 155:9, 155:14, 155:16, 156:2, 158:10, 158:16, 159:1, 159:2, 159:13, 160:7, 161:15, 163:9, 165:2, 165:17,</p>	<p>165:20, 168:15, 171:2, 171:3, 172:7, 174:5, 174:10, 175:4, 177:5 areas [2] - 158:19, 173:19 arisen [1] - 66:11 arrangement [1] - 66:13 arrangements [1] - 57:7 arrived [3] - 23:5, 29:11, 78:10 artificially [1] - 85:1 artificially [1] - 161:15 Asia [10] - 2:4, 42:13, 42:14, 42:20, 43:6, 56:9, 56:20, 59:17, 59:18, 60:1 ASIA [1] - 42:10 Asian [3] - 89:16, 89:20, 92:18 aside [1] - 169:2 assertions [1] - 82:17 assist [1] - 62:18 assistant [1] - 139:9 associated [2] - 41:9, 71:19 Associates [2] - 2:13, 129:10 ASSOCIATES [1] - 129:4 Associates-Iowa [2] - 2:13, 129:10 ASSOCIATES-IOWA [1] - 129:4 association [1] - 151:12 Association [6] - 76:20, 105:9, 106:16, 107:1, 151:7, 151:10 assume [1] - 37:15 assumed [2] - 33:15, 183:1 assumption [3] - 142:16, 143:20, 183:7 assurances [2] - 26:17, 36:6 AT [1] - 1:11 attach [1] - 145:16 attached [1] - 10:11 attempt [1] - 24:7 attendee [1] - 66:8 attention [4] - 92:10, 131:4, 157:2, 174:20 Attorney [2] - 87:14, 108:15 attorney [5] - 38:7,</p>
---	---	---	--	--

65:11, 157:16, 178:16, 179:2 Auburn [1] - 157:17 audience [8] - 27:16, 27:18, 36:18, 55:18, 101:13, 114:7, 145:6, 151:4 audio [1] - 87:9 August [4] - 48:19, 48:20, 54:17 authority [1] - 83:14 availability [1] - 161:2 available [11] - 66:12, 158:19, 160:14, 164:6, 169:16, 171:13, 171:18, 172:4, 172:13, 172:18, 179:17 Ave [6] - 61:7, 62:13, 88:4, 88:12, 92:2 Avenue [11] - 1:12, 3:6, 42:17, 43:16, 86:13, 88:11, 89:8, 100:8, 108:16, 120:18, 136:20 average [1] - 93:17 avoid [1] - 184:10 awarded [1] - 91:20 aware [6] - 25:5, 66:18, 68:6, 80:5, 145:20, 168:10 awhile [1] - 182:17 aye [35] - 5:1, 5:2, 41:15, 41:16, 58:18, 58:20, 86:1, 107:15, 107:16, 115:3, 115:4, 115:5, 115:6, 120:4, 120:5, 120:6, 120:7, 128:14, 128:15, 128:16, 135:18, 135:19, 135:20, 181:10, 181:11, 181:12, 187:14, 187:15, 187:16, 189:14, 189:15, 189:16, 190:5, 190:6, 190:7 Aye [2] - 58:19, 86:2 eyes [1] - 189:18	Bakers [2] - 2:11, 120:16 BAKERS [1] - 120:12 Bakery [2] - 2:12, 120:16 BAKERY [1] - 120:13 balance [1] - 42:19 bank [4] - 104:15, 104:20, 150:1, 150:4 Bank [6] - 148:18, 150:2, 188:5, 188:7, 188:11, 189:5 banquet [1] - 139:10 Bar [8] - 2:6, 2:9, 64:20, 66:1, 108:5, 109:12, 136:13, 157:18 BAR [2] - 64:17, 108:1 bar [4] - 61:12, 65:5, 69:13 Barbecue [1] - 175:14 Baron [1] - 105:10 base [3] - 71:17, 90:9, 142:11 based [9] - 67:19, 68:20, 74:9, 75:18, 104:9, 132:11, 141:17, 141:19, 142:5 Basement [1] - 1:12 basement [3] - 3:7, 47:8, 171:8 bath [2] - 50:14, 50:15 battle [1] - 63:6 bay [1] - 72:19 Bay [2] - 152:12, 178:15 beautiful [3] - 61:5, 93:8, 180:14 beauty [1] - 62:6 became [1] - 162:5 become [2] - 45:13, 66:12 beer [9] - 161:11, 161:14, 162:1, 167:3, 171:1, 171:2, 171:9, 179:2, 180:19 begin [1] - 133:15 beginning [1] - 154:18 behalf [3] - 65:13, 87:16, 106:17 behind [1] - 20:10 belly [2] - 133:5, 162:4 belly-up [1] - 162:4 Belmont [2] - 136:14, 138:3 below [4] - 59:18, 59:20, 75:4, 87:9 belt [1] - 14:4 beneficiary [2] -	167:3, 167:4 benefit [1] - 181:3 Bernard [3] - 27:17, 108:15, 136:19 BERNARD [1] - 27:18 best [5] - 26:11, 38:5, 61:2, 92:1, 191:6 better [2] - 185:11, 186:5 between [10] - 19:3, 19:15, 21:7, 65:17, 74:11, 96:10, 118:4, 118:12, 171:6, 176:13 beverage [3] - 42:15, 118:5, 139:11 beverages [9] - 5:19, 65:2, 86:11, 108:9, 115:16, 136:12, 145:15, 146:4, 146:8 Beverly [1] - 110:15 beyond [6] - 12:12, 12:13, 17:18, 21:15, 52:17, 83:19 Bhadar [1] - 188:19 big [5] - 64:9, 92:19, 93:14, 93:20, 94:3 bill [1] - 43:19 Biscuit [1] - 99:17 Bishop [1] - 65:12 bit [6] - 20:1, 47:2, 47:9, 91:10, 184:20, 185:20 black [1] - 75:3 blame [2] - 40:19, 41:7 blanket [1] - 184:2 block [4] - 56:9, 62:13, 99:17, 99:19 Blockbuster [1] - 88:13 board [1] - 68:19 Board [15] - 10:15, 15:12, 57:17, 109:11, 137:11, 152:16, 152:18, 153:1, 153:5, 153:14, 158:1, 158:11, 163:15, 167:13, 173:15 BOARD [1] - 1:6 Bob [2] - 131:10, 162:8 body [2] - 52:10, 52:20 BOM [3] - 2:10, 115:8, 115:11 Bombay [5] - 137:15, 137:17, 156:14, 164:1, 171:5 borrow [4] - 149:2, 149:3, 149:12,	149:18 borrowing [1] - 149:4 Boston [14] - 60:19, 61:2, 86:12, 91:4, 91:5, 91:18, 93:5, 94:2, 121:20, 123:16, 125:1, 125:6, 185:17 Bottle [1] - 121:19 bought [1] - 172:10 brand [2] - 63:8, 104:17 brand-new [1] - 104:17 Brattle [2] - 5:20, 66:2 brayman [1] - 78:7 break [2] - 157:9, 179:17 breakfast [3] - 117:1, 118:15, 151:18 brewery [1] - 171:16 brief [1] - 62:19 briefly [2] - 89:15, 110:10 Brighton [1] - 146:20 bring [17] - 53:4, 55:6, 57:13, 92:14, 93:3, 125:10, 125:12, 152:6, 154:6, 155:12, 156:7, 164:19, 167:20, 170:15, 171:15, 177:4, 177:18 bringing [4] - 27:2, 155:13, 160:7, 167:8 brings [1] - 152:8 broadcast [1] - 101:1 broken [2] - 35:18, 45:17 broker [1] - 170:10 brokerage [1] - 63:15 brother [2] - 87:17, 91:2 brothers [2] - 65:15, 106:19 brought [12] - 11:5, 21:11, 33:15, 39:11, 39:18, 40:1, 40:17, 161:17, 166:11, 166:12, 172:3 build [3] - 89:6, 94:20, 133:15 build-out [2] - 89:6, 94:20 building [23] - 45:14, 45:15, 50:19, 56:8, 74:17, 75:12, 78:17, 79:8, 82:19, 83:5, 84:7, 88:5, 99:16, 104:11, 107:11,	126:7, 127:9, 130:16, 132:20, 171:8, 176:17, 183:9 Building [6] - 1:11, 3:6, 25:13, 84:2, 126:14, 126:16 buildup [6] - 20:9, 21:6, 29:10, 30:3, 30:4, 30:14 built [1] - 45:9 Bull [1] - 175:14 burden [1] - 26:20 Burger [4] - 2:16, 181:19, 182:10, 184:16 BURGER [1] - 181:17 Burke [2] - 3:16, 4:1 BURKE [8] - 3:17, 4:3, 4:9, 4:16, 4:19, 5:1, 5:6, 5:10 burnt [1] - 7:13 bus [1] - 124:5 busier [2] - 121:12, 121:13 Business [9] - 2:14, 76:20, 105:8, 106:16, 106:20, 136:8, 136:15, 151:6, 151:10 business [33] - 3:13, 5:5, 5:16, 5:17, 28:5, 29:3, 29:15, 42:13, 46:15, 48:1, 49:12, 50:2, 52:5, 91:3, 94:2, 95:20, 102:20, 106:16, 109:13, 110:6, 110:13, 112:4, 121:18, 137:13, 157:3, 166:17, 167:1, 172:1, 172:5, 180:7, 182:16 BUSINESS [1] - 136:4 but.. [2] - 132:15, 144:9 buy [10] - 154:11, 155:10, 156:4, 165:15, 171:4, 172:4, 176:4, 176:5, 180:9, 180:11 buying [2] - 171:15, 178:1 bylaws [1] - 162:11
B				
backed [2] - 175:16, 175:18 background [4] - 25:19, 91:11, 140:3, 140:5 backroom [1] - 71:7 bad [1] - 121:17 bak [1] - 91:12				
				C
				Cab [7] - 188:5, 188:7, 188:10, 188:13, 188:16, 188:19, 189:2

<p>cafe [1] - 116:15</p> <p>Cafe [8] - 2:10, 2:12, 5:18, 6:3, 7:11, 33:9, 115:12, 120:16</p> <p>CAFE [3] - 5:12, 115:8, 120:13</p> <p>Cahill [10] - 6:16, 7:8, 12:18, 13:8, 14:6, 21:20, 25:15, 26:1, 35:2, 39:17</p> <p>CAHILL [34] - 7:8, 8:16, 8:20, 9:4, 9:9, 9:16, 12:2, 12:13, 15:6, 15:10, 15:16, 15:20, 19:16, 21:16, 22:4, 22:8, 22:13, 22:20, 23:4, 23:9, 28:14, 28:16, 29:20, 31:15, 31:20, 32:5, 32:19, 33:4, 33:8, 34:3, 34:6, 35:3, 38:6, 38:16</p> <p>CAKEWALK [1] - 120:12</p> <p>cakewalk [1] - 2:11</p> <p>Cakewalk [1] - 120:15</p> <p>calculation [1] - 74:10</p> <p>calculations [1] - 75:13</p> <p>CAMBRIDGE [2] - 1:2, 42:10</p> <p>Cambridge [30] - 1:13, 2:4, 7:9, 42:13, 48:8, 61:3, 62:5, 63:1, 67:16, 87:15, 93:3, 93:14, 94:4, 106:7, 106:10, 108:7, 108:16, 109:12, 115:14, 116:4, 116:11, 125:1, 125:13, 136:20, 137:14, 138:3, 145:11, 145:12, 157:17, 158:3</p> <p>Cambridge's [1] - 65:18</p> <p>Cambridgeside [3] - 182:2, 182:11</p> <p>CANAL [1] - 129:5</p> <p>Canal [3] - 2:13, 129:10, 129:12</p> <p>cannot [4] - 45:4, 48:1, 48:4, 152:19</p> <p>cap [32] - 155:9, 155:14, 156:2, 157:9, 158:13, 158:17, 158:20, 159:13, 163:9, 164:19, 165:12, 165:13, 168:2,</p>	<p>168:12, 168:13, 168:15, 168:16, 169:1, 170:4, 170:14, 171:20, 172:16, 173:20, 174:3, 174:4, 174:8, 179:18</p> <p>capable [1] - 177:20</p> <p>capacity [19] - 65:6, 80:18, 81:3, 86:18, 96:16, 97:8, 102:18, 103:6, 103:11, 103:14, 108:11, 115:18, 126:14, 126:18, 127:3, 130:17, 132:11, 133:9, 146:6</p> <p>Cape [2] - 109:4, 110:15</p> <p>capital [1] - 66:20</p> <p>capped [24] - 153:7, 153:8, 153:9, 154:9, 154:14, 154:15, 158:10, 158:16, 158:19, 159:2, 160:7, 161:10, 161:14, 165:2, 165:17, 165:19, 168:18, 171:1, 171:2, 173:19, 174:6, 174:10, 175:5, 177:13</p> <p>caps [2] - 169:15</p> <p>Captain [13] - 6:15, 7:8, 11:18, 12:17, 13:8, 14:6, 14:20, 21:20, 23:7, 25:15, 26:1, 35:2, 39:17</p> <p>captain [5] - 7:2, 19:13, 31:17, 32:15, 39:5</p> <p>CAPTAIN [34] - 7:8, 8:16, 8:20, 9:4, 9:9, 9:16, 12:2, 12:13, 15:6, 15:10, 15:16, 15:20, 19:16, 21:16, 22:4, 22:8, 22:13, 22:20, 23:4, 23:9, 28:14, 28:16, 29:20, 31:15, 31:20, 32:5, 32:19, 33:4, 33:8, 34:3, 34:6, 35:3, 38:6, 38:16</p> <p>CAPTURING [1] - 1:17</p> <p>care [5] - 7:20, 46:16, 126:20, 183:5, 186:3</p> <p>carefully [2] - 162:16, 169:6</p> <p>Carl [1] - 105:9</p> <p>carried [2] - 70:7,</p>	<p>104:4</p> <p>carries [1] - 104:13</p> <p>cars [5] - 129:13, 129:15, 129:16, 129:18, 132:12</p> <p>case [10] - 10:6, 57:2, 73:20, 81:4, 149:17, 167:14, 172:15, 175:3, 178:9, 183:9</p> <p>cases [1] - 160:14</p> <p>castigated [1] - 40:12</p> <p>catch [1] - 111:1</p> <p>categorically [1] - 179:3</p> <p>caught [1] - 134:6</p> <p>caused [1] - 13:15</p> <p>causing [1] - 100:2</p> <p>CC [1] - 99:3</p> <p>ceiling [3] - 47:5, 47:8, 102:12</p> <p>Central [27] - 42:2, 42:6, 60:3, 60:5, 60:9, 60:16, 61:1, 61:20, 62:9, 62:17, 63:10, 63:18, 64:7, 88:6, 89:9, 91:12, 91:14, 91:15, 92:14, 94:9, 98:18, 99:1, 105:8, 106:17, 121:19, 129:7, 158:9</p> <p>certain [3] - 66:19, 125:17, 127:4</p> <p>certainly [10] - 17:18, 69:2, 144:12, 144:17, 153:16, 158:12, 160:6, 161:3, 161:8, 165:5</p> <p>certificate [1] - 37:18</p> <p>certificates [1] - 37:7</p> <p>certification [1] - 34:18</p> <p>CERTIFICATION [1] - 191:13</p> <p>certified [1] - 24:20</p> <p>Certified [1] - 191:2</p> <p>certify [1] - 191:4</p> <p>CERTIFYING [1] - 191:15</p> <p>cetera [1] - 61:16</p> <p>Chair [3] - 35:20, 60:7, 77:6</p> <p>chair [2] - 37:2, 87:13</p> <p>chairing [1] - 56:16</p> <p>Chairman [3] - 65:9, 108:15, 109:10</p> <p>chairman [7] - 41:9, 58:2, 136:19, 137:11, 143:17, 163:14, 173:17</p> <p>chairs [2] - 90:13,</p>	<p>98:7</p> <p>challenge [1] - 93:19</p> <p>challenges [1] - 124:9</p> <p>Chamber [1] - 106:10</p> <p>chance [1] - 127:20</p> <p>change [15] - 38:14, 65:4, 71:5, 79:6, 81:2, 81:4, 109:14, 112:16, 113:14, 114:19, 117:1, 119:8, 126:18, 130:11, 184:10</p> <p>changed [5] - 24:4, 24:18, 131:12, 153:14, 174:2</p> <p>changes [2] - 91:13, 146:5</p> <p>changing [2] - 116:17, 116:18</p> <p>charge [1] - 34:12</p> <p>charged [1] - 34:12</p> <p>chart [1] - 75:20</p> <p>cheaper [2] - 180:10, 180:11</p> <p>check [6] - 43:7, 125:19, 127:6, 128:19, 140:3, 140:5</p> <p>checked [1] - 186:5</p> <p>chef [3] - 13:17, 139:9, 139:10</p> <p>chefs [2] - 13:6, 64:4</p> <p>Chelmsford [2] - 139:4, 139:19</p> <p>Chicago [1] - 93:2</p> <p>Chief [6] - 1:8, 3:12, 3:20, 70:3, 114:10, 135:4</p> <p>chief [5] - 20:7, 22:15, 30:19, 44:19, 74:5</p> <p>childs [1] - 60:3</p> <p>choose [1] - 57:14</p> <p>chose [2] - 33:13, 113:17</p> <p>CHOWDHURY [28] - 91:9, 94:7, 94:14, 94:18, 95:1, 95:4, 95:7, 95:12, 95:18, 96:19, 98:20, 99:8, 99:11, 100:4, 100:16, 101:7, 102:1, 102:9, 102:13, 102:19, 154:2, 156:15, 156:17, 157:1, 175:10, 176:15, 177:3, 177:16</p> <p>Chowdhury [14] - 62:4, 62:17, 86:9, 87:17, 87:18, 89:14, 91:1, 91:10, 154:3,</p>	<p>163:18, 164:10, 175:11, 178:6, 180:6</p> <p>Chris [2] - 3:16, 183:11</p> <p>CHRIS [8] - 3:17, 4:3, 4:9, 4:16, 4:19, 5:1, 5:6, 5:10</p> <p>Christopher [1] - 179:11</p> <p>Christophers [1] - 188:10</p> <p>Church [1] - 171:17</p> <p>cinema [1] - 87:11</p> <p>circumstance [1] - 50:12</p> <p>circumvent [1] - 171:19</p> <p>citation [1] - 31:10</p> <p>cited [4] - 8:10, 29:18, 82:7, 84:4</p> <p>cities [1] - 89:17</p> <p>City [12] - 26:11, 43:7, 48:8, 48:12, 48:18, 56:1, 56:9, 56:16, 67:18, 88:17, 106:3, 122:6</p> <p>city [7] - 42:20, 60:12, 61:8, 124:1, 170:14, 175:4, 179:17</p> <p>CITY [1] - 1:2</p> <p>CitySprouts [1] - 106:6</p> <p>clarification [7] - 84:17, 104:2, 144:16, 147:19, 148:6, 149:5, 150:13</p> <p>clarify [4] - 29:16, 36:1, 148:20, 178:15</p> <p>clean [8] - 10:17, 17:17, 23:19, 29:4, 46:20, 47:2, 47:3, 124:7</p> <p>cleaned [5] - 11:14, 11:20, 12:3, 14:16, 28:18</p> <p>cleaning [20] - 12:4, 13:6, 13:14, 14:1, 14:5, 14:17, 14:19, 17:10, 17:11, 17:14, 18:12, 19:2, 19:9, 21:1, 21:7, 24:19, 28:19, 29:14, 36:14, 119:9</p> <p>cleanings [2] - 18:11, 19:15</p> <p>clear [8] - 36:12, 59:5, 104:19, 140:20, 142:2, 144:12, 162:5, 179:8</p> <p>cleared [1] - 77:18</p>
---	---	---	---	---

<p>clearly [2] - 31:10, 52:7</p> <p>client [2] - 69:4, 89:3</p> <p>client's [1] - 24:10</p> <p>clients [2] - 24:6, 169:3</p> <p>close [3] - 54:2, 122:4, 157:2</p> <p>closed [5] - 6:3, 53:20, 116:14, 117:4, 178:18</p> <p>closely [1] - 162:7</p> <p>closing [3] - 22:18, 102:8, 112:6</p> <p>Clover [2] - 170:19, 170:20</p> <p>Club [2] - 137:15, 171:5</p> <p>CO [1] - 146:11</p> <p>coasting [1] - 154:13</p> <p>Cod [2] - 109:4, 110:15</p> <p>code [13] - 8:11, 8:13, 29:17, 78:17, 78:20, 79:8, 79:15, 80:19, 82:19, 83:5, 84:7, 107:11, 143:10</p> <p>codes [1] - 12:6</p> <p>coffee [2] - 117:1, 118:14</p> <p>collateral [4] - 141:6, 149:13, 150:3, 150:7</p> <p>colors [1] - 116:19</p> <p>comedy [1] - 87:6</p> <p>comfortable [1] - 150:9</p> <p>coming [10] - 23:3, 29:5, 46:9, 51:17, 93:5, 116:1, 121:14, 136:2, 151:15, 184:4</p> <p>comment [7] - 17:10, 40:14, 41:7, 159:8, 170:6, 173:12, 178:16</p> <p>comments [12] - 63:12, 76:11, 78:8, 78:14, 107:5, 135:9, 145:8, 150:17, 150:19, 163:2, 174:13, 180:2</p> <p>Commerce [1] - 106:10</p> <p>commercial [2] - 63:16, 143:9</p> <p>COMMISSION [2] - 1:4, 1:6</p> <p>Commission [44] - 3:3, 4:2, 6:1, 10:10, 11:6, 13:1, 24:3, 25:4, 35:13, 39:9,</p>	<p>39:12, 40:2, 40:12, 40:18, 41:10, 51:2, 56:17, 57:6, 57:18, 59:8, 60:8, 62:14, 67:11, 67:16, 68:17, 80:2, 80:16, 81:18, 83:1, 83:19, 87:14, 90:20, 114:14, 126:13, 134:16, 135:13, 155:2, 161:1, 161:9, 163:7, 174:20, 181:2, 187:9, 191:11</p> <p>Commission's [2] - 81:17, 84:1</p> <p>commissioned [1] - 191:3</p> <p>Commissioner [7] - 1:7, 1:7, 3:10, 3:11, 41:5, 151:1, 151:19</p> <p>Commissioners [4] - 65:9, 76:9, 107:7, 119:11</p> <p>committed [1] - 69:5</p> <p>common [11] - 70:10, 108:6, 112:1, 115:13, 120:17, 126:9, 136:9, 138:15, 143:17, 182:1, 183:19</p> <p>Commonwealth [1] - 191:3</p> <p>COMMONWEALTH [2] - 1:1, 191:1</p> <p>communication [1] - 150:12</p> <p>community [6] - 88:16, 89:9, 91:7, 107:2, 111:1, 152:3</p> <p>companies [3] - 93:14, 94:1, 94:9</p> <p>Company [1] - 21:15</p> <p>company [12] - 12:5, 13:20, 21:10, 22:13, 24:20, 28:19, 29:14, 30:15, 35:1, 35:7, 101:8, 184:15</p> <p>compare [1] - 113:20</p> <p>compared [1] - 125:1</p> <p>compete [2] - 155:13, 155:19</p> <p>competition [1] - 169:19</p> <p>complaint [1] - 17:16</p> <p>complement [1] - 89:11</p> <p>complete [1] - 191:5</p> <p>completely [1] - 64:3</p> <p>complex [1] - 56:5</p> <p>compliance [22] -</p>	<p>14:13, 14:18, 21:12, 25:16, 25:17, 26:6, 26:18, 26:19, 31:18, 33:16, 34:1, 34:4, 34:7, 34:10, 34:19, 37:18, 78:18, 82:6, 83:5, 84:5, 109:18, 163:11</p> <p>compliant [1] - 38:18</p> <p>complicated [3] - 95:16, 96:6, 181:1</p> <p>complication [2] - 113:2, 113:8</p> <p>complied [1] - 134:1</p> <p>comply [4] - 11:7, 12:17, 14:14, 23:20</p> <p>complying [1] - 110:1</p> <p>concentrate [1] - 116:13</p> <p>concentrated [1] - 98:10</p> <p>concept [13] - 89:1, 89:14, 89:15, 89:20, 90:3, 90:7, 90:15, 90:19, 92:11, 93:3, 93:6, 95:14, 96:2</p> <p>concern [3] - 36:3, 142:19, 152:15</p> <p>concerned [6] - 27:3, 36:8, 137:18, 138:6, 140:16, 142:15</p> <p>concerning [4] - 10:12, 24:3, 142:7, 144:5</p> <p>concerns [4] - 60:8, 77:10, 101:5, 135:10</p> <p>conclusion [3] - 22:12, 40:9, 57:2</p> <p>concrete [1] - 75:4</p> <p>condition [5] - 36:13, 37:16, 45:2, 134:20, 145:18</p> <p>conditional [1] - 10:5</p> <p>conditions [15] - 10:11, 10:16, 11:8, 11:13, 30:2, 35:11, 35:14, 35:17, 35:18, 36:2, 36:11, 37:15, 58:5, 107:10, 142:7</p> <p>conduct [3] - 67:10, 151:2, 178:11</p> <p>conducting [1] - 180:7</p> <p>confer [3] - 77:13, 82:4, 84:2</p> <p>Conference [1] - 1:12</p> <p>conference [1] - 3:7</p> <p>confess [1] - 82:20</p> <p>configuration [1] - 67:20</p> <p>conform [1] - 144:13</p>	<p>confused [2] - 16:2, 97:10</p> <p>confusing [1] - 184:7</p> <p>Conga [1] - 172:3</p> <p>Conga's [3] - 156:10, 156:11, 172:4</p> <p>Congratulations [1] - 107:19</p> <p>congratulations [1] - 128:19</p> <p>congregating [1] - 90:6</p> <p>connection [2] - 141:8, 143:5</p> <p>conscientious [1] - 105:18</p> <p>consider [1] - 53:6</p> <p>considered [2] - 158:18, 185:4</p> <p>consistent [1] - 28:11</p> <p>CONSTABLE [16] - 121:6, 121:11, 122:16, 123:2, 123:7, 123:11, 123:15, 124:11, 124:20, 125:6, 126:5, 127:5, 127:10, 128:4, 128:12, 129:2</p> <p>Constable [2] - 120:17, 121:6</p> <p>constantly [1] - 26:20</p> <p>construction [3] - 68:12, 69:9, 184:5</p> <p>Consulting [1] - 60:20</p> <p>consulting [2] - 101:10, 101:15</p> <p>consumed [2] - 108:10, 115:17</p> <p>contain [1] - 102:14</p> <p>contained [2] - 100:17, 101:17</p> <p>containing [1] - 85:5</p> <p>contingent [1] - 79:14</p> <p>continue [2] - 26:17, 27:6</p> <p>continued [1] - 42:6</p> <p>contract [7] - 19:18, 32:20, 33:5, 33:7, 33:9, 33:13, 33:15</p> <p>contractor [1] - 25:7</p> <p>control [4] - 45:13, 46:1, 96:17, 162:20</p> <p>CONTROL [1] - 191:15</p> <p>controlling [1] - 150:14</p> <p>Conundrum [2] - 161:18</p> <p>conversation [1] -</p>	<p>87:10</p> <p>conversational [1] - 100:11</p> <p>conversations [1] - 7:18</p> <p>conversion [1] - 98:5</p> <p>convincing [1] - 27:10</p> <p>coordinator [1] - 67:17</p> <p>copy [3] - 14:14, 123:9, 142:13</p> <p>corner [3] - 88:12, 99:18, 105:19</p> <p>corollary [1] - 17:5</p> <p>Corp [1] - 129:10</p> <p>corporation [2] - 109:7, 137:12</p> <p>CORPORATION [1] - 129:5</p> <p>correct [12] - 15:5, 16:8, 36:16, 68:4, 71:15, 73:18, 81:10, 117:9, 146:7, 161:20, 162:19, 182:20</p> <p>corrected [1] - 4:9</p> <p>COs [1] - 79:14</p> <p>cosmetic [1] - 67:3</p> <p>Council [6] - 41:20, 56:1, 56:17, 88:14, 88:17, 122:6</p> <p>council [1] - 59:15</p> <p>Councilor [8] - 106:3, 106:4, 106:5, 106:9, 119:17, 162:7, 168:11</p> <p>Councilors [1] - 106:3</p> <p>counsel [3] - 6:13, 17:1, 103:15</p> <p>counselor [2] - 24:12, 28:10</p> <p>count [3] - 79:6, 97:3, 103:16</p> <p>counting [1] - 97:10</p> <p>couple [6] - 7:20, 46:13, 62:10, 162:4, 170:13, 180:2</p> <p>course [5] - 7:4, 49:10, 123:7, 123:11, 145:2</p> <p>court [2] - 49:16, 182:4</p> <p>courtyard [1] - 61:10</p> <p>CPI [1] - 141:19</p> <p>Craig [1] - 106:9</p> <p>CRANE [5] - 157:16, 159:3, 160:11, 173:17, 175:2</p> <p>Crane [1] - 157:16</p> <p>Credit [4] - 188:13,</p>
---	---	---	---	---

<p>188:16, 188:19, 189:2 creditor [8] - 188:5, 188:8, 188:11, 188:14, 188:17, 188:20, 189:3, 189:6 Creperie [3] - 42:3, 42:7, 63:10 Crimson [3] - 66:7, 147:3, 180:1 crux [1] - 26:12 cultural [1] - 168:20 curious [1] - 76:10 current [9] - 12:6, 53:5, 55:6, 58:7, 66:5, 112:10, 113:10, 129:13, 176:13 customary [1] - 83:15 CV [2] - 182:9, 183:4</p>	<p>deal [10] - 36:2, 56:11, 79:4, 81:14, 85:16, 101:3, 110:4, 138:4, 160:1, 169:9 dealings [1] - 28:12 deals [1] - 169:10 dealt [2] - 68:15, 159:20 dear [1] - 57:4 debtor [8] - 188:5, 188:7, 188:10, 188:13, 188:16, 188:19, 189:2, 189:5 decease [1] - 142:5 December [4] - 10:9, 43:15, 44:3, 49:5 decide [1] - 142:8 decision [17] - 22:18, 25:19, 38:3, 39:8, 51:2, 52:11, 55:17, 58:4, 77:11, 78:1, 82:3, 84:19, 85:3, 85:17, 173:9, 173:15, 174:16 decisions [1] - 53:13 Decker [1] - 106:3 decrease [1] - 141:17 deemed [4] - 8:8, 10:19, 20:11, 21:2 defending [1] - 155:5 defer [5] - 41:12, 81:16, 82:2, 145:7, 173:8 deference [1] - 166:1 degree [1] - 139:6 delegate [1] - 83:18 delighted [1] - 151:8 delights [1] - 60:8 deliveries [1] - 102:3 denise [1] - 106:14 DENISE [9] - 76:18, 106:14, 151:5, 152:8, 159:11, 160:12, 160:16, 160:20, 170:19 Denise [2] - 76:18, 151:6 depart [1] - 63:11 Department [40] - 6:2, 6:3, 6:12, 7:9, 10:13, 10:19, 10:20, 11:3, 13:2, 13:12, 19:10, 20:2, 20:4, 25:6, 25:13, 25:14, 32:12, 32:14, 33:19, 34:15, 35:8, 37:6, 38:8, 39:20, 40:13, 41:1, 41:8, 84:2, 111:17, 111:18, 111:20, 126:15, 126:16,</p>	<p>131:9, 131:19, 132:4, 134:8, 185:18 depict [1] - 78:13 depicted [1] - 67:5 deputy [2] - 20:7, 22:15 describe [2] - 29:19, 140:8 described [1] - 22:10 description [1] - 65:5 design [1] - 90:4 designers [1] - 68:10 designs [1] - 77:10 desire [2] - 60:14, 110:9 detail [1] - 89:15 detailed [2] - 64:10, 142:13 determination [3] - 22:16, 35:13, 75:17 determine [1] - 7:15 determined [5] - 8:6, 12:5, 20:5, 28:17, 30:4 develop [1] - 56:9 development [1] - 88:16 Dhanda [3] - 147:1, 147:13, 180:1 DHANDA [4] - 147:13, 148:8, 148:12, 180:1 diesel [5] - 129:18, 129:20, 130:2, 131:12, 131:16 difference [5] - 78:14, 118:4, 164:7, 174:6, 180:5 differences [6] - 118:12, 166:4, 166:5, 166:6, 166:7, 166:14 different [15] - 8:11, 9:11, 17:1, 17:3, 20:13, 60:1, 76:1, 83:7, 90:15, 90:17, 97:1, 97:4, 118:20, 123:19, 184:20 difficulties [1] - 76:5 dining [6] - 89:20, 93:13, 93:15, 93:18, 94:3, 94:8 dinner [2] - 96:11, 122:2 dinners [1] - 93:18 dinning [1] - 94:10 DIRECT [1] - 191:15 direct [1] - 98:20 directed [1] - 174:17 DIRECTION [1] - 191:15</p>	<p>director [1] - 67:15 Director [3] - 76:19, 106:6, 106:15 dirty [4] - 13:16, 16:15, 17:11, 47:2 Disabilities [1] - 67:17 disabilities [1] - 68:1 Disability [1] - 109:18 disadvantaged [1] - 167:17 DISCIPLINARY [2] - 2:3, 5:12 disciplinary [1] - 5:16 discovered [1] - 132:1 discrepancy [3] - 131:16, 134:5, 135:7 discuss [1] - 128:5 discussed [1] - 144:7 discussion [3] - 69:4, 84:9, 144:4 Discussion [1] - 56:19 dishwashers [1] - 124:5 disparaging [1] - 27:7 distances [1] - 75:19 disturb [1] - 101:12 disturbance [1] - 100:2 DJ [3] - 87:11, 90:14, 100:12 document [3] - 17:13, 38:6, 38:10 documentation [10] - 9:18, 10:8, 18:8, 19:5, 21:7, 37:5, 37:9, 38:1, 114:13, 143:10 documented [1] - 114:19 DOES [1] - 191:14 Dolphin [1] - 59:20 done [18] - 10:17, 11:4, 12:9, 12:17, 14:10, 25:12, 29:1, 35:6, 37:20, 38:18, 56:12, 74:15, 119:3, 157:12, 159:15, 162:6, 163:10, 165:5 door [6] - 66:11, 72:20, 74:14, 75:17, 97:4, 116:13 doors [6] - 72:17, 73:11, 73:17, 74:12, 101:19, 102:8 Dorchester [2] - 91:19, 92:2 down [18] - 8:12, 14:3, 15:14, 25:13, 25:14, 25:15, 25:16, 26:3, 26:7, 34:2, 57:1,</p>	<p>80:6, 124:6, 125:10, 158:15, 159:4, 179:18, 183:9 DPW [1] - 123:9 drawing [6] - 46:12, 70:17, 77:20, 101:16, 127:4, 127:5 drawings [3] - 61:3, 85:10, 127:2 dream [1] - 62:13 drew [1] - 40:8 dripping [2] - 29:10, 30:7 Drive [1] - 65:13 drop [1] - 80:11 dry [2] - 71:1, 72:2 duct [9] - 10:17, 13:14, 14:1, 17:5, 28:17, 29:7, 30:14, 47:6, 47:11 ducts [3] - 11:14, 11:19, 12:2 due [6] - 5:20, 6:5, 20:9, 42:17, 44:2, 78:5 dueling [1] - 64:6 duly [1] - 191:3 Dunster [2] - 158:7, 158:9 during [6] - 25:2, 36:1, 98:4, 117:17, 121:20 duty [3] - 40:14, 125:2, 125:3</p>
D				
<p>D.C [1] - 139:9 d/b/a [16] - 2:6, 2:9, 2:10, 2:12, 2:13, 2:15, 2:16, 5:12, 64:20, 108:4, 115:11, 120:16, 129:10, 136:8, 181:16, 181:19 D/B/A [6] - 64:16, 107:20, 115:8, 120:12, 129:5, 136:5 damage [3] - 44:20, 45:14, 50:19 dancing [2] - 87:5, 87:7 dangerous [1] - 30:1 Danvers [1] - 110:15 darts [1] - 87:6 dash [1] - 69:20 DATE [1] - 1:14 date [18] - 9:19, 12:9, 15:18, 16:2, 17:19, 19:4, 23:7, 33:18, 34:15, 39:18, 48:14, 48:17, 49:16, 54:19, 55:1, 55:7, 57:14, 186:7 dated [2] - 31:19, 49:4 dates [5] - 16:19, 20:3, 32:3, 32:4, 37:7 daughter [1] - 56:4 days [12] - 7:20, 11:10, 15:7, 26:4, 26:7, 49:4, 108:12, 115:19, 120:20, 121:1, 125:3, 136:17 daytime [1] - 132:20</p>	<p>decisions [1] - 53:13 Decker [1] - 106:3 decrease [1] - 141:17 deemed [4] - 8:8, 10:19, 20:11, 21:2 defending [1] - 155:5 defer [5] - 41:12, 81:16, 82:2, 145:7, 173:8 deference [1] - 166:1 degree [1] - 139:6 delegate [1] - 83:18 delighted [1] - 151:8 delights [1] - 60:8 deliveries [1] - 102:3 denise [1] - 106:14 DENISE [9] - 76:18, 106:14, 151:5, 152:8, 159:11, 160:12, 160:16, 160:20, 170:19 Denise [2] - 76:18, 151:6 depart [1] - 63:11 Department [40] - 6:2, 6:3, 6:12, 7:9, 10:13, 10:19, 10:20, 11:3, 13:2, 13:12, 19:10, 20:2, 20:4, 25:6, 25:13, 25:14, 32:12, 32:14, 33:19, 34:15, 35:8, 37:6, 38:8, 39:20, 40:13, 41:1, 41:8, 84:2, 111:17, 111:18, 111:20, 126:15, 126:16,</p>	<p>131:9, 131:19, 132:4, 134:8, 185:18 depict [1] - 78:13 depicted [1] - 67:5 deputy [2] - 20:7, 22:15 describe [2] - 29:19, 140:8 described [1] - 22:10 description [1] - 65:5 design [1] - 90:4 designers [1] - 68:10 designs [1] - 77:10 desire [2] - 60:14, 110:9 detail [1] - 89:15 detailed [2] - 64:10, 142:13 determination [3] - 22:16, 35:13, 75:17 determine [1] - 7:15 determined [5] - 8:6, 12:5, 20:5, 28:17, 30:4 develop [1] - 56:9 development [1] - 88:16 Dhanda [3] - 147:1, 147:13, 180:1 DHANDA [4] - 147:13, 148:8, 148:12, 180:1 diesel [5] - 129:18, 129:20, 130:2, 131:12, 131:16 difference [5] - 78:14, 118:4, 164:7, 174:6, 180:5 differences [6] - 118:12, 166:4, 166:5, 166:6, 166:7, 166:14 different [15] - 8:11, 9:11, 17:1, 17:3, 20:13, 60:1, 76:1, 83:7, 90:15, 90:17, 97:1, 97:4, 118:20, 123:19, 184:20 difficulties [1] - 76:5 dining [6] - 89:20, 93:13, 93:15, 93:18, 94:3, 94:8 dinner [2] - 96:11, 122:2 dinners [1] - 93:18 dinning [1] - 94:10 DIRECT [1] - 191:15 direct [1] - 98:20 directed [1] - 174:17 DIRECTION [1] - 191:15</p>	<p>director [1] - 67:15 Director [3] - 76:19, 106:6, 106:15 dirty [4] - 13:16, 16:15, 17:11, 47:2 Disabilities [1] - 67:17 disabilities [1] - 68:1 Disability [1] - 109:18 disadvantaged [1] - 167:17 DISCIPLINARY [2] - 2:3, 5:12 disciplinary [1] - 5:16 discovered [1] - 132:1 discrepancy [3] - 131:16, 134:5, 135:7 discuss [1] - 128:5 discussed [1] - 144:7 discussion [3] - 69:4, 84:9, 144:4 Discussion [1] - 56:19 dishwashers [1] - 124:5 disparaging [1] - 27:7 distances [1] - 75:19 disturb [1] - 101:12 disturbance [1] - 100:2 DJ [3] - 87:11, 90:14, 100:12 document [3] - 17:13, 38:6, 38:10 documentation [10] - 9:18, 10:8, 18:8, 19:5, 21:7, 37:5, 37:9, 38:1, 114:13, 143:10 documented [1] - 114:19 DOES [1] - 191:14 Dolphin [1] - 59:20 done [18] - 10:17, 11:4, 12:9, 12:17, 14:10, 25:12, 29:1, 35:6, 37:20, 38:18, 56:12, 74:15, 119:3, 157:12, 159:15, 162:6, 163:10, 165:5 door [6] - 66:11, 72:20, 74:14, 75:17, 97:4, 116:13 doors [6] - 72:17, 73:11, 73:17, 74:12, 101:19, 102:8 Dorchester [2] - 91:19, 92:2 down [18] - 8:12, 14:3, 15:14, 25:13, 25:14, 25:15, 25:16, 26:3, 26:7, 34:2, 57:1,</p>	<p>80:6, 124:6, 125:10, 158:15, 159:4, 179:18, 183:9 DPW [1] - 123:9 drawing [6] - 46:12, 70:17, 77:20, 101:16, 127:4, 127:5 drawings [3] - 61:3, 85:10, 127:2 dream [1] - 62:13 drew [1] - 40:8 dripping [2] - 29:10, 30:7 Drive [1] - 65:13 drop [1] - 80:11 dry [2] - 71:1, 72:2 duct [9] - 10:17, 13:14, 14:1, 17:5, 28:17, 29:7, 30:14, 47:6, 47:11 ducts [3] - 11:14, 11:19, 12:2 due [6] - 5:20, 6:5, 20:9, 42:17, 44:2, 78:5 dueling [1] - 64:6 duly [1] - 191:3 Dunster [2] - 158:7, 158:9 during [6] - 25:2, 36:1, 98:4, 117:17, 121:20 duty [3] - 40:14, 125:2, 125:3</p>
E				
<p>early [1] - 81:14 easily [1] - 68:15 East [1] - 63:1 eating [1] - 90:5 economic [2] - 168:19, 170:1 Economy [1] - 99:2 edge [1] - 79:16 edgy [1] - 62:8 effect [1] - 165:1 effectively [1] - 166:9 effort [2] - 8:8, 157:10 egress [17] - 68:11, 69:15, 72:9, 72:14, 72:15, 73:8, 73:14, 74:2, 74:3, 74:19, 81:9, 83:6, 83:8, 84:5, 85:11, 101:20, 104:10 egresses [1] - 70:4 eight [4] - 52:17, 66:6, 87:10, 117:5 either [3] - 147:16, 156:1, 178:12</p>	<p>decisions [1] - 53:13 Decker [1] - 106:3 decrease [1] - 141:17 deemed [4] - 8:8, 10:19, 20:11, 21:2 defending [1] - 155:5 defer [5] - 41:12, 81:16, 82:2, 145:7, 173:8 deference [1] - 166:1 degree [1] - 139:6 delegate [1] - 83:18 delighted [1] - 151:8 delights [1] - 60:8 deliveries [1] - 102:3 denise [1] - 106:14 DENISE [9] - 76:18, 106:14, 151:5, 152:8, 159:11, 160:12, 160:16, 160:20, 170:19 Denise [2] - 76:18, 151:6 depart [1] - 63:11 Department [40] - 6:2, 6:3, 6:12, 7:9, 10:13, 10:19, 10:20, 11:3, 13:2, 13:12, 19:10, 20:2, 20:4, 25:6, 25:13, 25:14, 32:12, 32:14, 33:19, 34:15, 35:8, 37:6, 38:8, 39:20, 40:13, 41:1, 41:8, 84:2, 111:17, 111:18, 111:20, 126:15, 126:16,</p>	<p>131:9, 131:19, 132:4, 134:8, 185:18 depict [1] - 78:13 depicted [1] - 67:5 deputy [2] - 20:7, 22:15 describe [2] - 29:19, 140:8 described [1] - 22:10 description [1] - 65:5 design [1] - 90:4 designers [1] - 68:10 designs [1] - 77:10 desire [2] - 60:14, 110:9 detail [1] - 89:15 detailed [2] - 64:10, 142:13 determination [3] - 22:16, 35:13, 75:17 determine [1] - 7:15 determined [5] - 8:6, 12:5, 20:5, 28:17, 30:4 develop [1] - 56:9 development [1] - 88:16 Dhanda [3] - 147:1, 147:13, 180:1 DHANDA [4] - 147:13, 148:8, 148:12, 180:1 diesel [5] - 129:18, 129:20, 130:2, 131:12, 131:16 difference [5] - 78:14, 118:4, 164:7, 174:6, 180:5 differences [6] - 118:12, 166:4, 166:5, 166:6, 166:7, 166:14 different [15] - 8:11, 9:11, 17:1, 17:3, 20:13, 60:1, 76:1, 83:7, 90:15, 90:17, 97:1, 97:4, 118:20, 123:19, 184:20 difficulties [1] - 76:5 dining [6] - 89:20, 93:13, 93:15, 93:18, 94:3, 94:8 dinner [2] - 96:11, 122:2 dinners [1] - 93:18 dinning [1] - 94:10 DIRECT [1] - 191:15 direct [1] - 98:20 directed [1] - 174:17 DIRECTION [1] - 191:15</p>	<p>director [1] - 67:15 Director [3] - 76:19, 106:6, 106:15 dirty [4] - 13:16, 16:15, 17:11, 47:2 Disabilities [1] - 67:17 disabilities [1] - 68:1 Disability [1] - 109:18 disadvantaged [1] - 167:17 DISCIPLINARY [2] - 2:3, 5:12 disciplinary [1] - 5:16 discovered [1] - 132:1 discrepancy [3] - 131:16, 134:5, 135:7 discuss [1] - 128:5 discussed [1] - 144:7 discussion [3] - 69:4, 84:9, 144:4 Discussion [1] - 56:19 dishwashers [1] - 124:5 disparaging [1] - 27:7 distances [1] - 75:19 disturb [1] - 101:12 disturbance [1] - 100:2 DJ [3] - 87:11, 90:14, 100:12 document [3] - 17:13, 38:6, 38:10 documentation [10] - 9:18, 10:8, 18:8, 19:5, 21:7, 37:5, 37:9, 38:1, 114:13, 143:10 documented [1] - 114:19 DOES [1] - 191:14 Dolphin [1] - 59:20 done [18] - 10:17, 11:4, 12:9, 12:17, 14:10, 25:12, 29:1, 35:6, 37:20, 38:18, 56:12, 74:15, 119:3, 157:12, 159:15, 162:6, 163:10, 165:5 door [6] - 66:11, 72:20, 74:14, 75:17, 97:4, 116:13 doors [6] - 72:17, 73:11, 73:17, 74:12, 101:19, 102:8 Dorchester [2] - 91:19, 92:2 down [18] - 8:12, 14:3, 15:14, 25:13, 25:14, 25:15, 25:16, 26:3, 26:7, 34:2, 57:1,</p>	<p>80:6, 124:6, 125:10, 158:15, 159:4, 179:18, 183:9 DPW [1] - 123:9 drawing [6] - 46:12, 70:17, 77:20, 101:16, 127:4, 127:5 drawings [3] - 61:3, 85:10, 127:2 dream [1] - 62:13 drew [1] - 40:8 dripping [2] - 29:10, 30:7 Drive [1] - 65:13 drop [1] - 80:11 dry [2] - 71:1, 72:2 duct [9] - 10:17, 13:14, 14:1, 17:5, 28:17, 29:7, 30:14, 47:6, 47:11 ducts [3] - 11:14, 11:19, 12:2 due [6] - 5:20, 6:5, 20:9, 42:17, 44:2, 78:5 dueling [1] - 64:6 duly [1] - 191:3 Dunster [2] - 158:7, 158:9 during [6] - 25:2, 36:1, 98:4, 117:17, 121:20 duty [3] - 40:14, 125:2, 125:3</p>

<p>elaboration [1] - 174:13</p> <p>electrical [3] - 9:13, 134:11, 134:13</p> <p>electronics [1] - 3:8</p> <p>element [2] - 78:16, 79:7</p> <p>Ellen [1] - 1:9</p> <p>Elm [1] - 116:4</p> <p>email [1] - 82:18</p> <p>emanate [1] - 100:14</p> <p>emergency [2] - 101:20, 102:2</p> <p>employees [3] - 22:6, 36:9, 91:5</p> <p>enacted [1] - 174:1</p> <p>encourage [2] - 61:8, 82:3</p> <p>encouragement [1] - 88:15</p> <p>encumbrances [1] - 143:8</p> <p>End [3] - 122:1, 123:19, 124:16</p> <p>end [5] - 11:15, 70:10, 125:11, 125:18, 151:15</p> <p>endanger [1] - 45:5</p> <p>ended [1] - 154:13</p> <p>enforced [1] - 177:13</p> <p>engaged [1] - 56:7</p> <p>England [1] - 139:3</p> <p>Enormous [1] - 63:19</p> <p>enter [2] - 61:11</p> <p>ENTERPRISES [1] - 107:20</p> <p>Enterprises [2] - 2:8, 108:4</p> <p>entertain [2] - 82:2, 147:7</p> <p>entertainment [10] - 60:13, 61:19, 65:3, 87:5, 89:11, 93:9, 136:10, 137:20, 138:10, 138:16</p> <p>entire [1] - 70:12</p> <p>entities [1] - 17:8</p> <p>entity [1] - 141:20</p> <p>entrance [3] - 6:14, 97:4, 100:7</p> <p>equality [1] - 63:7</p> <p>equation [1] - 180:12</p> <p>equipment [1] - 102:3</p> <p>escapes [1] - 164:3</p> <p>essentially [1] - 74:20</p> <p>establish [2] - 37:15, 37:16</p> <p>established [3] - 76:3, 85:14, 179:6</p> <p>establishment [9] -</p>	<p>11:2, 11:4, 24:15, 28:13, 61:4, 61:11, 69:16, 118:18, 155:17</p> <p>establishments [4] - 36:4, 60:15, 65:19, 76:1</p> <p>estate [1] - 63:16</p> <p>et [1] - 61:16</p> <p>evening [22] - 3:2, 43:2, 55:20, 65:8, 65:9, 84:4, 87:12, 87:13, 90:12, 98:4, 105:4, 108:14, 121:5, 121:8, 130:3, 136:18, 137:10, 144:15, 151:5, 182:4, 182:6, 182:7</p> <p>eventually [2] - 33:14, 53:15</p> <p>everyday [1] - 95:19</p> <p>evidence [2] - 11:18, 83:4</p> <p>exact [1] - 26:15</p> <p>exactly [12] - 70:15, 94:7, 94:18, 95:4, 102:13, 132:3, 156:15, 160:16, 160:17, 164:5, 169:15, 172:9</p> <p>examples [1] - 164:8</p> <p>excessive [3] - 21:6, 29:10, 30:5</p> <p>exchanged [1] - 180:3</p> <p>excited [1] - 92:18</p> <p>excitement [1] - 61:20</p> <p>exciting [2] - 61:14, 63:13</p> <p>execute [1] - 143:9</p> <p>executed [1] - 176:19</p> <p>execution [1] - 144:3</p> <p>Executive [3] - 76:19, 106:6, 106:15</p> <p>executive [1] - 67:15</p> <p>exercised [3] - 108:7, 115:14, 182:1</p> <p>exhaust [4] - 17:4, 44:20, 46:2, 153:18</p> <p>exhausted [5] - 52:19, 157:11, 160:4, 161:4, 164:17</p> <p>exhausting [3] - 169:14, 169:15, 169:16</p> <p>exhaustion [2] - 163:8, 168:4</p> <p>exhibition [1] - 87:7</p> <p>existence [1] - 118:5</p> <p>existing [9] - 69:13, 70:4, 71:1, 72:16,</p>	<p>88:1, 111:11, 113:12, 129:11, 157:10</p> <p>exists [1] - 71:8</p> <p>exit [6] - 74:9, 76:1, 79:16, 80:8, 102:2</p> <p>exorbitant [1] - 164:11</p> <p>expanding [2] - 71:4, 81:5</p> <p>expansion [4] - 66:15, 67:4, 67:19, 69:9</p> <p>experience [13] - 46:10, 89:20, 91:17, 92:2, 96:1, 96:3, 110:5, 110:9, 123:13, 138:5, 138:7, 139:11, 142:11</p> <p>experienced [3] - 62:4, 68:8, 80:16</p> <p>expired [2] - 30:19, 47:4</p> <p>Expires [1] - 191:11</p> <p>explain [2] - 28:3, 166:7</p> <p>explains [2] - 186:11, 186:12</p> <p>expressing [1] - 67:18</p> <p>extend [3] - 53:1, 62:11, 65:5</p> <p>extended [1] - 6:4</p> <p>extension [1] - 52:12</p> <p>extensively [1] - 75:10</p> <p>external [1] - 150:11</p> <p>extinguisher [4] - 31:6, 31:11, 31:12, 45:12</p> <p>extinguishers [2] - 31:1, 31:4</p> <p>extinguishing [1] - 24:17</p> <p>extinguishment [1] - 17:2</p> <p>extra [1] - 104:20</p> <p>extremely [1] - 26:15</p> <p>eye [2] - 124:13, 151:3</p>	<p>facts [1] - 27:9</p> <p>fail [1] - 11:7</p> <p>failing [1] - 42:17</p> <p>failure [5] - 13:4, 30:1, 30:16, 30:20</p> <p>fair [4] - 155:15, 155:20, 162:13, 162:18</p> <p>fairly [1] - 162:15</p> <p>fall [1] - 122:6</p> <p>familiar [6] - 9:7, 56:3, 68:18, 88:5, 91:1, 91:15</p> <p>famous [1] - 93:1</p> <p>fan [1] - 14:4</p> <p>far [13] - 27:3, 71:12, 79:18, 80:6, 80:15, 137:17, 138:5, 142:14, 148:17, 155:4, 156:8, 160:8, 174:9</p> <p>fashion [2] - 27:1, 68:16</p> <p>fast [2] - 118:14, 118:17</p> <p>fault [2] - 40:4, 40:10</p> <p>favor [16] - 4:20, 41:15, 58:17, 85:20, 106:3, 106:11, 107:14, 115:3, 119:18, 120:4, 128:14, 135:17, 181:10, 187:13, 189:14, 190:5</p> <p>February [9] - 47:15, 58:5, 59:6, 59:11, 77:11, 85:3, 151:15, 173:10, 191:11</p> <p>fed [1] - 132:19</p> <p>fee [4] - 55:10, 132:10, 132:13, 161:11</p> <p>feed [2] - 133:7, 133:11</p> <p>feeds [2] - 130:16, 133:1</p> <p>fees [11] - 49:9, 52:9, 53:5, 55:6, 59:7, 59:9, 132:8, 132:10, 186:6, 186:7, 186:9</p> <p>fell [1] - 30:2</p> <p>felt [3] - 20:8, 25:11, 31:9</p> <p>few [1] - 49:3</p> <p>Fi [1] - 121:16</p> <p>fight [4] - 47:20, 50:6, 50:7, 50:9</p> <p>fighting [1] - 48:15</p> <p>figure [2] - 113:20, 163:19</p> <p>file [4] - 57:15, 91:8,</p>	<p>113:6, 123:9</p> <p>filed [1] - 132:6</p> <p>filings [1] - 148:16</p> <p>filings [1] - 143:10</p> <p>fill [2] - 93:16, 93:20</p> <p>filled [2] - 88:18, 88:19</p> <p>finally [1] - 180:13</p> <p>finance [1] - 149:20</p> <p>financially [1] - 163:17</p> <p>financing [2] - 140:17, 140:20</p> <p>findings [1] - 7:7</p> <p>fine [1] - 6:15</p> <p>finest [1] - 65:19</p> <p>Fire [37] - 1:8, 3:12, 6:2, 6:3, 6:11, 7:9, 10:12, 10:19, 10:20, 11:2, 13:2, 13:12, 14:3, 19:9, 20:2, 20:4, 23:18, 24:1, 24:11, 25:6, 32:12, 32:14, 33:1, 33:18, 33:19, 34:15, 35:7, 37:6, 38:8, 39:20, 41:1, 41:7, 111:17, 131:9, 131:18, 132:3, 134:8</p> <p>fire [43] - 6:5, 8:9, 8:11, 8:13, 9:12, 10:1, 13:15, 15:4, 16:5, 25:1, 29:17, 30:17, 31:1, 31:4, 31:11, 31:12, 32:11, 32:18, 36:5, 36:8, 44:18, 44:19, 44:20, 45:7, 45:11, 45:13, 45:14, 45:16, 46:1, 46:15, 46:16, 47:7, 47:10, 47:12, 47:14, 50:13, 70:6, 70:10, 74:5, 75:6, 81:8, 134:13</p> <p>fires [2] - 24:13, 26:14</p> <p>firm [2] - 65:11, 101:15</p> <p>first [18] - 3:13, 5:15, 15:3, 28:8, 30:1, 44:1, 46:5, 55:11, 57:13, 61:11, 64:2, 68:6, 91:18, 92:2, 109:5, 137:1, 137:6, 169:1</p> <p>fits [1] - 90:18</p> <p>five [13] - 9:10, 11:10, 24:13, 26:14, 31:3, 31:15, 80:11, 92:13, 95:8, 96:8, 154:6, 184:16</p> <p>fix [5] - 45:2, 45:8, 45:19, 46:5, 50:18</p>
F				
<p>faces [2] - 169:4, 169:10</p> <p>facility [3] - 75:8, 110:18, 145:10</p> <p>fact [10] - 15:19, 19:7, 23:2, 34:10, 40:20, 140:14, 144:2, 148:10, 163:15, 184:18</p> <p>factor [2] - 61:20, 138:7</p>				

flame [1] - 20:9
flames [1] - 30:9
flammable [2] -
 129:12, 131:13
flammables [2] -
 131:15, 131:17
flared [1] - 13:7
Flat [1] - 170:15
flexible [2] - 61:15,
 158:12
floor [8] - 78:6, 78:8,
 87:1, 87:8, 97:13,
 97:18, 99:6, 136:16
FLOUR [1] - 120:13
Flour [5] - 2:12, 62:11,
 63:9, 120:16
flow [5] - 74:9, 74:11,
 76:2, 79:16, 80:8
focus [1] - 174:8
folks [3] - 151:16,
 180:13, 180:16
follow [1] - 132:1
followed [1] - 7:14
following [2] - 10:16,
 35:17
food [16] - 60:12, 61:2,
 89:16, 90:1, 92:19,
 96:5, 96:6, 108:8,
 115:15, 118:13,
 118:14, 118:17,
 137:18, 139:10,
 170:17, 182:4
FOODS [1] - 181:16
Foods [3] - 2:16,
 181:19, 182:14
force [1] - 11:1
forced [2] - 154:11,
 155:10
forcing [1] - 156:4
foregoing [1] - 191:4
FOREGOING [1] -
 191:13
foreperson [1] - 48:8
form [1] - 34:19
formal [1] - 89:19
format [1] - 131:12
former [1] - 66:3
formerly [1] - 88:1
forth [2] - 107:10,
 183:10
fortune [1] - 180:14
forward [5] - 27:11,
 43:1, 62:15, 79:17,
 152:4
foundation [1] - 25:20
Four [1] - 56:9
four [15] - 9:20, 10:18,
 17:17, 18:4, 28:18,
 31:14, 36:4, 36:5,
 51:9, 51:10, 51:12,

52:17, 135:2,
 153:11, 156:9
frankly [1] - 23:18
free [3] - 121:16,
 140:20, 143:8
frequency [1] - 36:11
frequent [1] - 36:14
frequently [1] - 10:18
Friday [2] - 86:16,
 112:7
friendly [1] - 80:13
front [8] - 9:19, 71:10,
 72:17, 73:12, 73:15,
 73:16, 74:3, 152:16
fuel [4] - 129:18,
 129:20, 130:2,
 131:12
fuels [1] - 133:7
fulfill [1] - 52:8
FULFORD [9] - 130:8,
 130:13, 131:3,
 131:11, 132:2,
 132:19, 133:4,
 133:10, 133:17
Fulford [1] - 130:8
full [6] - 25:16, 49:8,
 89:11, 122:3, 153:5,
 171:11
fully [1] - 69:4
function [5] - 87:2,
 90:8, 94:6, 94:13,
 102:5
functions [2] - 90:15,
 100:13
future [3] - 141:16,
 184:11, 186:17

G

Galleria [4] - 147:3,
 180:2, 182:3, 182:11
gallons [5] - 129:15,
 129:17, 129:18,
 129:19, 133:9
Galloway [1] - 109:8
Ganesh [1] - 188:13
garage [5] - 71:17,
 74:2, 75:5, 75:7,
 129:12
GARDNER [201] -
 3:18, 4:4, 4:7, 4:12,
 5:3, 6:10, 7:3, 8:14,
 8:18, 9:2, 9:5, 10:3,
 11:11, 12:11, 12:14,
 16:1, 16:6, 16:16,
 17:15, 18:3, 19:1,
 19:12, 21:17, 23:6,
 23:15, 27:12, 27:19,
 35:9, 36:17, 37:1,
 38:13, 39:1, 40:3,

40:6, 40:20, 41:11,
 41:14, 41:17, 41:19,
 43:2, 46:13, 47:12,
 47:16, 47:18, 49:7,
 49:11, 54:18, 55:3,
 55:9, 55:16, 57:5,
 57:12, 57:20, 58:10,
 58:15, 59:1, 59:15,
 64:13, 67:13, 72:2,
 72:8, 72:11, 73:1,
 73:13, 74:18, 76:4,
 76:8, 76:12, 77:4,
 78:2, 80:15, 82:1,
 82:11, 83:7, 83:17,
 84:11, 84:17, 85:15,
 85:19, 86:3, 87:12,
 97:6, 101:3, 102:10,
 102:16, 105:2,
 105:13, 106:12,
 107:3, 107:13,
 107:17, 108:13,
 110:10, 110:17,
 113:1, 114:6, 115:2,
 115:6, 115:20,
 116:5, 116:10,
 117:3, 117:7,
 117:10, 117:13,
 117:20, 118:3,
 118:8, 118:11,
 119:10, 119:13,
 120:2, 120:7, 121:5,
 121:9, 122:17,
 123:4, 123:12,
 124:8, 124:19,
 125:4, 125:13,
 126:1, 126:3, 127:6,
 127:11, 127:18,
 128:3, 128:6,
 128:13, 128:17,
 130:3, 130:10,
 130:20, 131:18,
 132:7, 133:13,
 134:7, 134:15,
 135:3, 135:9,
 135:12, 135:17,
 136:1, 137:8,
 138:14, 140:7,
 141:6, 141:10,
 142:18, 144:10,
 145:5, 145:13,
 145:17, 145:20,
 146:3, 146:14,
 147:7, 148:9,
 148:14, 148:19,
 150:8, 150:18,
 151:1, 152:10,
 153:16, 153:20,
 157:6, 157:13,
 159:6, 163:1,
 164:20, 167:16,
 168:1, 168:7,

168:17, 170:6,
 173:7, 174:12,
 174:19, 175:6,
 178:3, 178:10,
 179:19, 180:20,
 181:9, 181:13,
 182:7, 182:12,
 182:15, 184:8,
 186:6, 186:10,
 187:2, 187:6,
 187:13, 187:17,
 189:13, 189:17,
 190:1, 190:4
Gardner [2] - 1:7, 3:10
gas [8] - 7:12, 9:14,
 20:7, 20:10, 22:5,
 22:9, 22:13, 30:12
gasoline [2] - 129:15,
 129:17
general [2] - 3:3,
 72:20
GENERAL [1] - 1:4
generally [1] - 51:15
generator [7] - 130:16,
 130:17, 132:18,
 133:5, 133:8,
 133:10, 133:11
gentleman [1] - 21:8
gentlemen [2] -
 169:11, 171:4
GEORGE [5] - 105:6,
 170:9, 170:20,
 172:17, 173:3
George [2] - 105:7,
 170:9
Gerald [2] - 1:8, 3:12
GERALD [99] - 4:17,
 4:20, 5:2, 5:8, 6:13,
 6:18, 7:2, 16:20,
 17:6, 18:7, 18:10,
 18:14, 18:17, 24:12,
 26:9, 28:10, 28:15,
 41:13, 50:10, 54:16,
 58:13, 58:19, 59:19,
 69:8, 69:14, 70:6,
 70:9, 71:13, 73:7,
 74:7, 75:6, 75:20,
 79:10, 80:4, 82:9,
 84:16, 86:1, 94:5,
 94:19, 95:2, 98:12,
 98:15, 99:5, 99:13,
 101:19, 102:5,
 103:9, 103:15,
 103:20, 104:14,
 104:18, 107:8,
 107:16, 111:7,
 111:10, 113:15,
 114:3, 114:11,
 114:17, 115:4,
 119:2, 119:5, 120:1,

120:5, 127:15,
 128:16, 132:14,
 133:2, 133:6,
 133:12, 134:3,
 134:10, 135:5,
 135:16, 135:19,
 140:3, 146:10,
 146:17, 149:19,
 150:15, 153:7,
 156:13, 160:13,
 160:18, 169:2,
 172:11, 177:14,
 181:8, 181:11,
 184:1, 185:11,
 186:19, 187:4,
 187:12, 187:16,
 189:12, 189:16,
 190:3, 190:6
ghost [1] - 172:19
GIBSON [4] - 170:9,
 170:20, 172:17,
 173:3
Gibson [1] - 170:9
Giovanni [1] - 106:8
given [1] - 164:7
glad [2] - 56:14, 157:1
gladly [1] - 69:6
glued [1] - 45:10
goal [1] - 102:14
Gobind [1] - 189:2
Gobinski [1] - 87:19
GOLDBERG [74] - 6:6,
 6:17, 6:20, 9:15,
 12:15, 15:7, 15:11,
 15:17, 16:4, 16:8,
 16:18, 17:4, 17:9,
 18:1, 18:4, 18:9,
 18:12, 18:15, 18:19,
 19:6, 21:19, 22:7,
 22:9, 22:17, 23:1,
 23:17, 25:8, 27:15,
 28:4, 31:13, 33:17,
 33:20, 34:5, 34:13,
 34:20, 35:5, 36:16,
 37:12, 38:5, 39:3,
 40:5, 40:8, 41:4,
 41:18, 108:14,
 109:10, 111:13,
 112:5, 112:9,
 112:12, 112:14,
 112:20, 113:11,
 114:2, 136:18,
 137:4, 137:10,
 138:20, 142:10,
 143:16, 144:16,
 145:1, 146:12,
 146:16, 146:19,
 147:4, 147:6,
 148:15, 163:13,
 165:4, 165:18,

<p>167:19, 168:6, 168:9 Goldberg [5] - 6:6, 34:8, 38:3, 108:15, 136:19 Gomes [2] - 115:12, 116:3 GOMES [13] - 116:3, 116:7, 116:11, 117:5, 117:12, 117:15, 118:2, 118:6, 118:10, 118:13, 118:19, 119:4, 119:7 gonna [6] - 78:4, 82:15, 92:18, 93:6, 100:18, 142:1 goods [1] - 71:1 grade [1] - 75:4 graduated [2] - 132:10, 132:11 GRAFTON [1] - 64:16 grafton [1] - 2:6 Grafton [3] - 64:20, 65:14, 65:20 grant [3] - 52:11, 53:12, 167:14 granted [7] - 10:6, 108:8, 115:15, 126:13, 126:15, 138:10, 141:4 granting [1] - 185:4 grants [2] - 126:16, 143:2 grease [8] - 20:9, 21:6, 29:4, 29:10, 30:3, 30:6, 30:13 great [9] - 36:2, 63:2, 63:20, 105:20, 107:1, 107:2, 110:4, 121:18, 138:4 Greater [1] - 61:2 Green [6] - 94:15, 94:16, 99:9, 99:11, 100:3, 101:19 grew [1] - 91:12 Grill [6] - 2:6, 63:7, 64:20, 66:7, 136:13, 157:18 GRILL [1] - 64:17 gross [1] - 141:13 ground [2] - 129:14, 152:2 Group [4] - 2:14, 60:20, 136:8, 136:15 GROUP [1] - 136:4 group [1] - 162:9 grown [1] - 63:2 guess [12] - 27:19, 55:16, 84:8, 104:18, 114:5, 140:8,</p>	<p>142:18, 148:9, 167:16, 185:3, 185:11, 187:5 guide [1] - 52:3 Guido's [6] - 136:13, 138:2, 153:8, 157:18, 165:16, 165:19 Gurn [1] - 188:18 Guru [1] - 189:1 GUYS [1] - 181:16 Guys [3] - 2:16, 181:19, 182:14 guys [7] - 29:5, 156:1, 157:2, 159:5, 159:20, 161:5, 171:20</p>	<p>176:12, 176:20, 181:6, 181:12, 185:6, 185:14, 186:16, 187:10, 187:15, 189:8, 189:10, 189:15, 190:7 Haas [2] - 1:7, 3:11 had.. [1] - 134:6 Hall [1] - 48:12 hall [1] - 102:6 Hampshire [3] - 109:8, 139:8, 139:17 hand [4] - 19:19, 71:4, 145:6, 191:8 handicap [2] - 83:10, 84:6 hands [1] - 105:18 hands-on [1] - 105:18 happy [4] - 67:6, 68:16, 83:13, 169:19 HAQ [3] - 109:1, 109:5, 111:9 hard [1] - 122:14 Hardware [1] - 99:3 Hardy [1] - 126:1 hardy [1] - 126:2 Harvard [34] - 62:6, 64:6, 76:19, 92:4, 92:13, 93:12, 103:7, 106:15, 106:20, 151:6, 151:9, 152:18, 152:19, 153:4, 153:12, 154:4, 156:5, 158:3, 158:8, 159:14, 160:8, 163:16, 164:6, 164:15, 165:8, 172:7, 172:10, 172:13, 176:2, 177:5, 177:7, 177:17, 178:1, 179:10 HASS [1] - 54:8 hatched [3] - 70:2, 70:17, 71:6 hatching [2] - 71:11, 71:20 hazards [2] - 6:5, 36:9 head [2] - 130:9, 161:17 Healey [1] - 162:8 Health [4] - 13:11, 15:12, 25:13, 111:17 hear [10] - 6:15, 36:1, 44:19, 57:16, 101:2, 153:20, 170:7, 171:17, 172:18, 178:3 heard [18] - 36:18,</p>	<p>42:5, 55:19, 57:3, 76:13, 105:3, 114:4, 114:8, 119:14, 127:13, 147:12, 157:15, 159:10, 163:17, 171:14, 175:8, 178:6, 187:8 HEARING [1] - 1:4 hearing [23] - 10:5, 10:10, 11:6, 11:13, 35:19, 37:1, 38:3, 39:13, 42:3, 48:18, 48:19, 53:18, 54:12, 54:14, 55:15, 58:4, 77:12, 82:3, 85:17, 109:16, 175:13, 175:19, 187:8 hearings [2] - 40:11, 66:8 heavy [2] - 20:9, 75:3 height [1] - 78:15 held [4] - 86:12, 136:13, 149:13, 158:4 help [9] - 46:1, 46:3, 48:9, 50:5, 51:1, 52:3, 117:18, 169:12, 174:15 helpful [11] - 7:4, 38:4, 43:3, 77:8, 77:15, 77:17, 80:9, 80:14, 92:17, 173:14, 174:14 helping [1] - 117:19 helps [1] - 53:11 hereby [2] - 143:2, 191:4 hereunto [1] - 191:7 hierarchy [1] - 45:15 high [3] - 30:10, 69:1, 156:4 high-top [1] - 69:1 higher [2] - 126:15, 126:17 hire [1] - 24:8 hired [2] - 23:19, 101:8 historical [1] - 173:12 historically [1] - 81:18 history [5] - 76:5, 162:12, 167:17, 168:10, 173:18 history-wise [1] - 173:18 hit [1] - 152:2 Hoffa [1] - 159:19 hold [4] - 42:18, 51:3, 58:8, 82:13 holder [6] - 5:18, 42:15, 65:1, 120:17,</p>	<p>136:9, 155:16 holders [1] - 145:14 holding [2] - 53:6, 175:3 holiday [1] - 86:17 Holyoke [1] - 170:17 home [1] - 162:3 homeless [1] - 124:16 homework [2] - 121:15, 177:20 hood [20] - 10:17, 13:14, 14:1, 14:5, 14:19, 17:2, 17:9, 17:11, 17:14, 20:15, 21:12, 23:13, 24:14, 24:19, 28:17, 29:11, 29:14, 30:6, 30:11, 32:6 hoods [2] - 24:17, 32:11 HOPE [10] - 87:13, 97:12, 98:14, 98:18, 99:15, 100:7, 103:18, 104:1, 104:16, 105:1 hope [1] - 50:17 Hope [2] - 87:15 hoping [4] - 95:15, 96:15, 122:5, 122:8 hospital [2] - 7:14, 22:6 host [1] - 151:17 hostage [1] - 82:13 hot [1] - 64:4 hotel [1] - 139:6 hourly [1] - 114:17 hours [16] - 62:12, 86:14, 98:4, 108:11, 112:11, 112:13, 113:10, 113:14, 114:16, 114:18, 115:18, 120:19, 128:5, 136:16, 182:3, 182:4 House [2] - 66:3, 66:4 house [2] - 132:17, 162:5 Hyannis [1] - 109:3</p>
H				
<p>H-A-Q [1] - 109:6 HAAS [110] - 21:14, 29:16, 31:17, 32:1, 32:9, 32:15, 33:2, 33:6, 34:8, 34:17, 35:20, 37:2, 37:14, 41:16, 49:20, 51:1, 51:6, 51:10, 51:14, 52:16, 53:19, 54:5, 58:2, 58:20, 59:5, 59:13, 70:16, 70:19, 71:2, 71:9, 72:4, 73:2, 73:9, 74:4, 76:10, 77:6, 82:10, 82:12, 84:8, 84:14, 84:20, 85:8, 85:13, 85:18, 86:2, 94:12, 94:16, 95:5, 95:10, 95:14, 96:13, 99:9, 100:1, 100:9, 100:20, 107:12, 107:15, 110:20, 111:5, 112:3, 112:8, 112:10, 112:13, 112:18, 113:9, 114:15, 115:1, 115:5, 118:17, 118:20, 119:12, 119:19, 120:6, 122:14, 126:4, 127:1, 128:1, 128:10, 128:15, 134:19, 135:14, 135:20, 138:8, 138:11, 139:12, 139:15, 139:20, 141:1, 142:6, 144:20, 148:5, 149:8, 149:14, 150:5, 150:17, 152:6, 165:16,</p>				
I				
<p>idea [1] - 161:9 identify [1] - 175:9 identifying [1] - 85:6 imagine [1] - 100:11 immediate [1] - 108:18 immediately [2] - 143:9, 152:2 impacts [1] - 168:20</p>				

<p>impediment [1] - 77:16</p> <p>impinging [2] - 165:6, 165:13</p> <p>important [5] - 47:9, 56:13, 56:15, 59:10, 81:13</p> <p>importantly [1] - 105:20</p> <p>imposed [1] - 36:10</p> <p>impossibility [1] - 75:3</p> <p>impossible [1] - 163:17</p> <p>IN [3] - 1:4, 42:10, 191:14</p> <p>inactive [12] - 42:18, 44:5, 48:11, 48:12, 51:3, 52:2, 52:12, 53:1, 53:17, 55:13, 57:16, 158:4</p> <p>inappropriate [1] - 83:15</p> <p>inbetween [1] - 18:2</p> <p>INC [8] - 1:17, 5:12, 42:10, 64:16, 107:20, 115:8, 136:4, 181:16</p> <p>Inc [24] - 2:3, 2:5, 2:6, 2:8, 2:10, 2:15, 2:16, 5:17, 6:7, 14:14, 42:13, 64:20, 65:14, 108:4, 136:8, 136:13, 136:15, 157:19, 181:19, 188:5, 188:7, 188:10, 188:16, 189:5</p> <p>incentive [1] - 156:3</p> <p>inches [1] - 30:10</p> <p>incident [7] - 7:11, 12:9, 22:2, 22:5, 22:10, 27:4, 38:20</p> <p>incidents [4] - 9:6, 9:11, 9:20, 36:5</p> <p>include [4] - 87:5, 97:15, 141:7, 144:18</p> <p>includes [1] - 97:14</p> <p>including [3] - 145:4, 153:12, 156:9</p> <p>inclusive [1] - 141:1</p> <p>Incorporated [1] - 115:11</p> <p>incorporating [1] - 81:5</p> <p>incorrect [1] - 143:20</p> <p>increase [13] - 20:8, 65:6, 66:16, 80:18, 81:3, 81:7, 103:13, 120:19, 121:18,</p>	<p>127:2, 141:17, 142:4, 165:1</p> <p>increased [2] - 103:5, 130:17</p> <p>increasing [1] - 165:5</p> <p>incredible [1] - 161:13</p> <p>independent [1] - 148:2</p> <p>INDEX [1] - 2:1</p> <p>INDIA [1] - 5:13</p> <p>India [5] - 5:18, 6:3, 7:11, 33:10, 139:11</p> <p>Indian [3] - 137:16, 167:9</p> <p>Indica [3] - 166:17, 167:1, 167:2</p> <p>indicate [1] - 163:18</p> <p>indicated [4] - 31:3, 161:12, 164:4, 168:11</p> <p>indicates [1] - 33:18</p> <p>indicative [1] - 70:12</p> <p>industry [2] - 63:16, 66:18</p> <p>inference [1] - 40:15</p> <p>inflated [1] - 161:16</p> <p>inform [1] - 15:8</p> <p>information [8] - 23:16, 104:2, 141:11, 141:12, 141:14, 173:13, 182:20, 186:14</p> <p>informed [1] - 13:8</p> <p>initial [2] - 16:5, 141:18</p> <p>injury [1] - 13:5</p> <p>innovative [1] - 60:18</p> <p>inside [5] - 29:7, 86:19, 100:20, 124:18, 182:10</p> <p>insights [2] - 64:14, 184:12</p> <p>inspect [1] - 25:2</p> <p>inspected [2] - 12:4, 133:20</p> <p>inspection [13] - 11:18, 12:18, 15:2, 16:14, 32:11, 37:9, 37:17, 37:18, 38:14, 78:3, 131:19, 146:11</p> <p>Inspectional [7] - 15:13, 20:5, 22:14, 109:20, 111:16, 126:10, 134:9</p> <p>inspections [1] - 32:18</p> <p>Inspector [2] - 20:6, 22:14</p> <p>inspectors [1] - 26:19</p> <p>inspects [1] - 185:18</p>	<p>install [1] - 31:1</p> <p>installed [2] - 134:4, 143:4</p> <p>instead [1] - 92:19</p> <p>institution [1] - 88:19</p> <p>instructions [1] - 16:12</p> <p>insurance [1] - 46:16</p> <p>intend [1] - 137:15</p> <p>intent [5] - 49:8, 49:12, 49:20, 83:18, 147:17</p> <p>intention [1] - 177:4</p> <p>intentions [1] - 27:8</p> <p>Interest [1] - 143:1</p> <p>interest [15] - 140:11, 140:14, 140:15, 142:17, 143:3, 143:14, 143:19, 144:5, 144:8, 144:18, 147:15, 148:1, 149:6, 155:8, 184:8</p> <p>interested [4] - 173:11, 173:14, 174:14, 181:4</p> <p>interesting [4] - 60:11, 85:2, 151:11, 160:3</p> <p>interests [1] - 143:12</p> <p>interior [2] - 74:1, 97:14</p> <p>interpreted [1] - 168:2</p> <p>intricate [1] - 89:5</p> <p>introduce [2] - 105:5, 130:4</p> <p>invest [1] - 47:20</p> <p>investigation [1] - 10:2</p> <p>investing [1] - 83:14</p> <p>investment [1] - 89:7</p> <p>invite [1] - 173:11</p> <p>invited [1] - 151:19</p> <p>invoice [2] - 34:9, 34:11</p> <p>involved [4] - 7:12, 69:9, 151:13, 152:3</p> <p>involvement [1] - 7:6</p> <p>involves [1] - 71:6</p> <p>IOWA [1] - 129:4</p> <p>Iowa [2] - 2:13, 129:10</p> <p>irresponsible [1] - 24:5</p> <p>ISD [1] - 74:16</p> <p>issue [22] - 10:8, 25:1, 25:3, 26:12, 36:15, 36:19, 68:11, 68:20, 69:2, 79:3, 79:20, 84:4, 96:13, 154:17, 154:18, 162:9, 163:6, 169:13,</p>	<p>169:14, 170:14, 171:15, 173:20</p> <p>issued [1] - 78:18</p> <p>issues [22] - 10:4, 21:3, 21:5, 80:1, 81:13, 81:19, 83:5, 84:4, 84:6, 85:6, 85:7, 96:14, 96:16, 101:4, 102:17, 128:10, 135:3, 154:5, 158:20, 170:1, 171:5, 178:7</p> <p>item [2] - 42:12, 59:16</p> <p>items [1] - 96:10</p> <p>itself [2] - 150:10, 164:18</p>	<p>47:1, 64:10, 97:3</p> <p>John [1] - 106:8</p> <p>join [1] - 151:12</p> <p>juices [1] - 118:15</p> <p>jukebox [2] - 87:8, 87:9</p> <p>July [1] - 50:16</p> <p>justified [1] - 25:9</p> <p>justify [1] - 170:5</p>
K				
<p>KAHN [4] - 109:2, 110:12, 110:19, 111:4</p> <p>Kahn [1] - 109:3</p> <p>karaoke [1] - 87:8</p> <p>Kathleen [1] - 158:7</p> <p>keep [8] - 50:8, 50:17, 51:17, 52:7, 52:9, 124:7, 143:7, 151:3</p> <p>keeping [5] - 124:13, 129:14, 129:16, 156:2, 159:3</p> <p>Kelly [2] - 106:9</p> <p>KEN [4] - 55:20, 56:20, 59:17, 59:20</p> <p>Ken [1] - 55:20</p> <p>Kendall [5] - 60:15, 60:17, 60:20, 64:7, 94:10</p> <p>Kennedy [2] - 99:13, 99:17</p> <p>kept [1] - 117:7</p> <p>KEVIN [5] - 157:16, 159:3, 160:11, 173:17, 175:2</p> <p>Kevin [4] - 157:16, 159:12, 160:9, 161:7</p> <p>Khan [1] - 108:5</p> <p>kind [4] - 34:10, 61:19, 151:16, 184:10</p> <p>kinda [9] - 45:3, 46:2, 63:7, 69:20, 71:14, 79:11, 123:17, 124:5, 186:1</p> <p>King [3] - 2:16, 181:19, 182:10</p> <p>KING [1] - 181:17</p> <p>Kings [1] - 184:16</p> <p>Kitchen [1] - 63:18</p> <p>kitchen [1] - 30:17</p> <p>knitting [2] - 72:4, 72:6</p> <p>knowledge [3] - 15:12, 32:17, 82:17</p> <p>known [1] - 91:6</p> <p>knows [4] - 75:14, 105:11, 153:5, 179:16</p>				
J				
<p>JAMES [21] - 65:8, 69:19, 71:3, 71:11, 71:16, 72:12, 72:18, 73:16, 73:19, 74:16, 75:2, 75:9, 78:4, 79:19, 80:14, 80:20, 82:15, 83:9, 83:20, 85:4, 85:12</p> <p>James [1] - 65:10</p> <p>JANICE [5] - 130:6, 131:6, 133:19, 134:18, 135:1</p> <p>Janice [1] - 130:6</p> <p>January [6] - 1:14, 3:4, 10:9, 42:7, 49:5, 191:8</p> <p>JASWINDER [1] - 5:12</p> <p>Jaswinder [5] - 2:3, 5:17, 6:7, 14:14, 27:17</p> <p>JAY [9] - 182:5, 182:9, 182:13, 183:1, 184:13, 185:8, 185:16, 186:18, 187:1</p> <p>Jay [1] - 182:5</p> <p>Jeremie [1] - 189:5</p> <p>Jessica [1] - 188:4</p> <p>jest [1] - 31:9</p> <p>JFK [7] - 65:3, 66:5, 136:10, 136:15, 137:3, 137:13, 138:4</p> <p>Jill [1] - 191:2</p> <p>JILLSON [8] - 106:14, 151:5, 152:8, 159:11, 160:12, 160:16, 160:20, 170:19</p> <p>Jillson [4] - 106:14, 151:6, 159:9, 163:15</p> <p>job [6] - 14:11, 26:10,</p>				

Korean [1] - 164:2 Kourafas [1] - 191:2	142:14, 142:15, 144:3, 144:12, 148:2, 148:6, 150:10, 150:13, 154:19, 154:20, 155:5, 155:8, 157:3	113:2, 113:16, 115:13, 115:15, 118:5, 119:1, 120:18, 122:9, 126:7, 126:12, 127:7, 129:12, 129:13, 130:14, 130:19, 131:5, 131:7, 131:13, 131:15, 131:17, 132:5, 135:8, 136:10, 136:12, 138:1, 138:2, 138:10, 138:15, 139:13, 140:12, 140:14, 140:19, 140:20, 141:2, 141:4, 141:5, 141:8, 142:8, 142:17, 143:15, 143:18, 144:5, 144:8, 144:19, 144:20, 145:1, 146:5, 146:9, 147:16, 147:18, 148:1, 148:7, 149:11, 149:12, 149:15, 150:3, 150:6, 152:17, 154:8, 154:13, 154:16, 154:20, 155:1, 155:5, 155:8, 155:10, 155:11, 155:12, 155:14, 155:16, 155:19, 156:10, 157:10, 157:19, 158:3, 158:4, 159:18, 159:19, 160:6, 161:14, 161:20, 162:2, 162:15, 163:9, 163:16, 163:19, 164:2, 164:3, 164:14, 165:10, 165:15, 166:20, 167:3, 167:5, 169:20, 170:10, 171:5, 171:7, 171:9, 171:11, 171:12, 172:6, 174:5, 175:3, 175:15, 175:18, 175:20, 176:3, 176:5, 176:8, 177:2, 177:4, 177:6, 177:9, 177:14, 178:1, 178:7, 178:16, 178:20, 179:3, 180:2, 180:8, 180:16, 180:17, 180:18, 182:1, 182:10, 182:18,	183:4, 183:14, 183:20, 185:5 LICENSE [2] - 1:4, 1:6 License [22] - 3:3, 4:2, 6:1, 10:10, 11:6, 12:20, 24:3, 25:4, 35:13, 39:9, 39:11, 40:1, 40:17, 41:10, 51:2, 59:7, 114:13, 126:13, 134:16, 155:2, 163:6, 174:20 licensed [2] - 65:19, 165:2 licensee [3] - 11:1, 65:14, 67:7 licensee's [1] - 25:4 licensees [1] - 67:12 licenses [33] - 61:18, 89:11, 117:8, 143:5, 143:7, 145:15, 149:7, 149:9, 152:19, 153:4, 153:5, 153:11, 155:18, 156:4, 156:5, 156:7, 156:9, 158:17, 158:19, 161:12, 165:8, 165:14, 167:2, 169:16, 170:13, 171:1, 171:2, 171:13, 176:1, 176:3, 177:17, 179:10, 185:19 licensing [1] - 183:3 Licensing [1] - 111:19 licking [1] - 30:11 lien [2] - 147:16, 147:20 liens [1] - 143:8 lieu [1] - 140:19 life [2] - 45:5, 132:20 light [2] - 87:6, 93:10 likely [1] - 98:3 limit [2] - 80:12, 83:12 limited [1] - 103:1 Limited [1] - 147:3 Line [6] - 2:6, 64:20, 66:4, 66:9, 105:16, 105:19 line [3] - 30:2, 69:20, 75:3 LINE [1] - 64:16 lines [1] - 137:17 Lint [2] - 174:18, 174:20 liquor [21] - 48:3, 63:5, 103:9, 139:13, 140:12, 144:20, 145:1, 147:18, 147:20, 148:7,	149:15, 154:8, 155:1, 155:5, 155:8, 171:11, 175:15, 176:7, 180:8, 180:16, 180:17 list [3] - 28:9, 179:9, 179:16 listed [1] - 135:7 literally [1] - 29:10 live [1] - 87:6 lively [1] - 61:9 LLC [9] - 2:7, 2:11, 86:6, 86:9, 86:12, 86:13, 88:3, 120:12, 120:16 loan [2] - 141:7, 149:14 located [1] - 65:12 location [12] - 66:5, 67:8, 72:19, 88:3, 88:4, 95:11, 104:4, 104:5, 104:9, 117:11, 137:14, 158:15 Location [3] - 31:6, 31:7, 31:8 locations [4] - 31:3, 67:9, 70:14, 123:16 lock [1] - 125:11 locking [1] - 125:16 Lofts [2] - 99:14, 99:17 Loh [3] - 42:14, 43:5, 56:3 LOH [25] - 43:5, 43:12, 43:17, 44:4, 44:14, 46:18, 47:14, 47:17, 47:19, 49:10, 49:14, 50:3, 50:11, 51:5, 51:7, 51:12, 52:14, 54:2, 54:13, 55:1, 55:8, 57:19, 58:12, 59:4, 59:12 Lombardi [2] - 1:11, 3:5 look [8] - 27:15, 39:8, 62:1, 69:6, 75:15, 78:12, 89:16, 169:5 looked [4] - 135:6, 161:1, 161:9, 162:16 looking [11] - 12:15, 53:19, 83:12, 95:13, 130:13, 152:4, 158:12, 163:18, 176:1, 177:8, 177:10 looks [2] - 74:18, 148:17 loss [1] - 49:19 lost [4] - 48:3, 49:1, 50:6, 162:4
L				
L-A-T-K-A [1] - 137:7 LA [2] - 89:17, 93:2 lack [1] - 167:17 laid [1] - 95:17 landlord [31] - 45:2, 45:6, 45:18, 46:4, 50:5, 56:6, 56:7, 89:2, 140:9, 140:16, 141:12, 141:19, 142:12, 142:16, 143:2, 143:11, 143:13, 145:4, 146:18, 146:19, 147:1, 147:2, 147:14, 148:13, 155:6, 166:6, 166:12, 171:6, 176:7, 178:7 landlord's [1] - 140:10 language [3] - 163:6, 168:4, 169:5 largely [1] - 67:3 larger [4] - 63:2, 74:13, 89:19, 103:4 last [18] - 24:13, 25:3, 32:17, 43:10, 54:16, 101:12, 109:6, 122:6, 122:12, 137:2, 137:7, 152:11, 153:10, 157:9, 158:2, 178:14, 179:13, 188:2 late [3] - 67:14, 96:12, 122:6 LATKA [13] - 137:6, 137:9, 140:15, 141:3, 141:9, 141:16, 142:9, 144:7, 149:1, 149:10, 149:16, 150:2, 150:6 Latka [1] - 137:7 Law [1] - 87:15 law [4] - 49:2, 56:4, 65:11, 124:2 laws [2] - 24:17, 169:6 learn [2] - 95:19, 96:1 learning [2] - 81:13, 95:20 lease [26] - 45:6, 47:20, 48:4, 48:16, 49:14, 49:15, 50:6, 50:9, 66:14, 89:6, 95:9, 142:7, 142:10,	least [8] - 11:14, 49:17, 80:15, 141:13, 158:1, 174:3, 174:9, 174:15 leave [3] - 63:15, 142:8, 179:4 LEE [14] - 69:11, 69:17, 70:8, 70:15, 70:18, 70:20, 71:7, 72:6, 72:10, 72:14, 73:6, 73:11, 73:18, 105:15 Lee [4] - 65:1, 65:15, 105:15, 106:19 left [6] - 3:12, 70:1, 70:19, 95:9, 99:4, 99:16 legal [2] - 86:17, 158:14 legally [2] - 45:9, 125:6 legislative [1] - 173:18 legislators [1] - 88:17 legitimate [1] - 69:2 lender [5] - 148:11, 148:17, 149:4, 149:5, 154:5 lengthy [1] - 69:3 less [4] - 72:1, 123:4, 123:5, 177:12 letter [9] - 44:7, 46:8, 48:6, 48:13, 49:3, 49:4, 105:9, 183:12 letters [1] - 91:8 level [4] - 79:9, 87:10, 100:11, 132:16 license [187] - 5:20, 10:5, 10:12, 10:16, 12:9, 27:5, 35:12, 42:16, 42:18, 43:18, 44:6, 48:3, 48:5, 48:11, 48:12, 49:2, 49:9, 49:18, 50:1, 51:3, 52:1, 52:6, 52:7, 52:9, 53:7, 53:10, 53:14, 54:6, 54:9, 55:6, 57:14, 58:9, 59:9, 63:5, 65:2, 65:3, 86:11, 87:5, 88:1, 103:2, 103:3, 103:10, 103:19, 104:6, 104:8, 104:12, 108:6, 108:8, 112:2,			

<p>lounge [2] - 90:7, 92:14</p> <p>Lounge [3] - 92:5, 154:3, 175:12</p> <p>lovely [1] - 62:5</p> <p>Lovett [1] - 75:14</p> <p>low [2] - 47:9, 176:10</p> <p>lower [1] - 126:17</p> <p>luck [8] - 59:14, 86:4, 106:1, 107:19, 120:9, 129:1, 136:1, 187:18</p> <p>lunch [1] - 96:11</p>	<p>137:4, 138:4, 139:2, 178:4, 181:20</p> <p>managers [3] - 96:20, 125:2, 139:5</p> <p>managing [3] - 117:11, 117:14, 139:17</p> <p>Manchester [1] - 139:5</p> <p>mandate [1] - 24:19</p> <p>Manor [1] - 158:8</p> <p>March [27] - 9:13, 10:11, 10:14, 11:13, 12:16, 14:3, 14:13, 17:19, 18:18, 19:3, 19:15, 22:1, 25:18, 28:16, 35:12, 35:15, 37:10, 37:13, 39:4, 39:8, 49:16, 50:15, 122:9, 122:10, 183:2, 187:1</p> <p>Maria [1] - 181:20</p> <p>Marino's [2] - 173:5</p> <p>marked [2] - 31:11, 31:15</p> <p>market [2] - 52:6, 90:16</p> <p>marshal [1] - 25:1</p> <p>Mass [6] - 59:19, 61:6, 62:13, 88:3, 88:4, 88:12</p> <p>MASSACHUSETTS [2] - 1:1, 191:1</p> <p>Massachusetts [13] - 1:12, 1:13, 3:6, 42:16, 86:13, 88:11, 89:8, 100:8, 108:16, 110:15, 120:18, 136:20, 191:4</p> <p>match [1] - 127:8</p> <p>matched [1] - 126:9</p> <p>materials [1] - 181:3</p> <p>math [1] - 11:12</p> <p>matter [23] - 3:13, 5:16, 5:17, 7:6, 19:7, 27:20, 37:3, 41:12, 56:6, 57:3, 57:17, 58:7, 59:6, 76:14, 84:15, 85:9, 114:8, 119:15, 157:15, 175:7, 181:1, 181:7, 191:6</p> <p>MATTERS [1] - 2:2</p> <p>max [1] - 98:13</p> <p>maximum [1] - 98:1</p> <p>Mayor [2] - 91:20, 106:4</p> <p>mayor's [1] - 56:17</p> <p>Mayor's [1] - 60:7</p> <p>mean [10] - 18:16,</p>	<p>81:10, 81:12, 82:12, 84:18, 124:11, 162:12, 167:20, 169:16, 173:4</p> <p>meaning [1] - 52:13</p> <p>means [2] - 27:2, 51:16</p> <p>meant [1] - 83:10</p> <p>meantime [2] - 173:10, 183:11</p> <p>mechanic [1] - 13:4</p> <p>medallion [2] - 188:4, 188:6</p> <p>Medallion [8] - 188:7, 188:9, 188:10, 188:12, 188:15, 188:18, 189:1, 189:4</p> <p>meet [3] - 55:4, 57:7, 85:13</p> <p>meeting [12] - 3:3, 3:15, 3:19, 4:8, 57:17, 79:14, 151:3, 151:15, 151:18, 173:9, 190:8</p> <p>melt [1] - 45:3</p> <p>member [5] - 56:16, 80:16, 106:20, 145:6, 154:1</p> <p>MEMBER [1] - 27:18</p> <p>members [22] - 36:18, 55:5, 58:1, 76:12, 87:14, 105:2, 106:2, 106:13, 109:10, 109:19, 114:7, 119:13, 127:12, 135:10, 137:11, 147:11, 151:9, 157:14, 159:17, 163:2, 163:14, 187:7</p> <p>MEMBERS [1] - 1:6</p> <p>memo [1] - 82:7</p> <p>Menino [1] - 92:1</p> <p>mentioned [4] - 29:17, 63:9, 75:16, 185:20</p> <p>menu [3] - 112:8, 117:1, 122:3</p> <p>Mercantile [2] - 188:5, 189:5</p> <p>Merrimack [1] - 109:8</p> <p>mess [1] - 176:11</p> <p>met [4] - 7:16, 35:15, 56:3, 58:6</p> <p>METZGER [1] - 105:6</p> <p>METZGER [1] - 105:7</p> <p>Miami [1] - 93:2</p> <p>MICHAEL [199] - 3:18, 4:4, 4:7, 4:12, 5:3, 6:10, 7:3, 8:14, 8:18, 9:2, 9:5, 10:3, 11:11, 12:11, 12:14, 16:1,</p>	<p>16:6, 16:16, 17:15, 18:3, 19:1, 19:12, 21:17, 23:6, 23:15, 27:12, 27:19, 35:9, 36:17, 37:1, 38:13, 39:1, 40:3, 40:6, 40:20, 41:11, 41:14, 41:17, 41:19, 43:2, 46:13, 47:12, 47:16, 47:18, 49:7, 49:11, 54:18, 55:3, 55:9, 55:16, 57:5, 57:12, 58:10, 58:15, 59:15, 64:13, 67:13, 72:2, 72:8, 72:11, 73:1, 73:13, 74:18, 76:4, 76:8, 76:12, 77:4, 78:2, 80:15, 82:1, 82:11, 83:7, 83:17, 84:11, 84:17, 85:15, 85:19, 86:3, 87:12, 97:6, 101:3, 102:10, 102:16, 105:2, 105:13, 106:12, 107:3, 107:13, 107:17, 108:13, 110:10, 110:17, 113:1, 114:6, 115:2, 115:6, 115:20, 116:5, 116:10, 117:3, 117:7, 117:10, 117:13, 117:20, 118:3, 118:8, 118:11, 119:10, 119:13, 120:2, 120:7, 121:5, 121:9, 122:17, 123:4, 123:12, 124:8, 124:19, 125:4, 125:13, 126:1, 126:3, 127:6, 127:11, 127:18, 128:3, 128:6, 128:13, 128:17, 130:3, 130:10, 130:20, 131:18, 132:7, 133:13, 134:7, 134:15, 135:3, 135:9, 135:12, 135:17, 136:1, 137:8, 138:14, 140:7, 141:6, 141:10, 142:18, 144:10, 145:5, 145:13, 145:17, 145:20, 146:3, 146:14, 147:7, 148:9, 148:14, 148:19, 150:8, 150:18, 151:1, 152:10,</p>	<p>153:16, 153:20, 157:6, 157:13, 159:6, 163:1, 164:20, 167:16, 168:1, 168:7, 168:17, 170:6, 173:7, 174:12, 174:19, 175:6, 178:3, 178:10, 179:19, 180:20, 181:9, 181:13, 182:7, 182:12, 182:15, 184:8, 186:6, 186:10, 187:2, 187:6, 187:13, 187:17, 189:13, 189:17, 190:1, 190:4</p> <p>mICHAEL [1] - 59:1</p> <p>Michael [5] - 1:7, 1:11, 3:5, 3:10, 67:14</p> <p>middle [1] - 3:10</p> <p>MIDDLESEX [1] - 191:1</p> <p>Midwest [1] - 63:6</p> <p>might [1] - 124:9</p> <p>might've [1] - 7:16</p> <p>Mike [1] - 75:14</p> <p>mile [1] - 60:17</p> <p>Milk [1] - 121:7</p> <p>mind [2] - 125:5, 164:3</p> <p>mine [3] - 153:12, 156:10, 176:2</p> <p>minutes [4] - 3:14, 4:13, 4:18, 96:9</p> <p>misinterpreted [1] - 34:14</p> <p>missed [2] - 54:19, 55:1</p> <p>mistake [2] - 183:6, 183:16</p> <p>misunderstood [1] - 148:20</p> <p>MIT [4] - 56:8, 89:2, 92:16, 121:14</p> <p>modest [1] - 66:15</p> <p>modifications [2] - 111:12, 111:13</p> <p>modified [1] - 150:10</p> <p>modify [2] - 68:10, 85:8</p> <p>MOHAMMED [4] - 109:2, 110:12, 110:19, 111:4</p> <p>Mohammed [1] - 109:2</p> <p>MOKSA [1] - 86:6</p> <p>Moksa [6] - 2:7, 60:4, 62:20, 86:9, 86:13,</p>
M				
<p>M-E-T-Z-G-E-R [1] - 105:7</p> <p>MA [1] - 108:5</p> <p>ma'am [2] - 46:14, 47:13</p> <p>machinery [1] - 23:7</p> <p>magic [1] - 87:8</p> <p>MAHARAJA [1] - 136:5</p> <p>Maharaja [5] - 2:15, 136:8, 137:3, 137:12, 137:13</p> <p>Maher [1] - 106:5</p> <p>mailed [2] - 43:14, 43:15</p> <p>main [2] - 100:6, 100:7</p> <p>maintain [4] - 30:17, 31:1, 52:2, 124:1</p> <p>maintained [1] - 117:8</p> <p>maintaining [1] - 96:17</p> <p>maintenance [1] - 130:9</p> <p>major [1] - 89:17</p> <p>Mall [1] - 182:11</p> <p>mall [6] - 183:3, 183:18, 184:4, 185:13, 186:2, 186:8</p> <p>malt [1] - 42:15</p> <p>manage [4] - 91:5, 96:20, 139:3, 140:1</p> <p>management [3] - 139:7, 139:11, 186:14</p> <p>Management [1] - 106:9</p> <p>manager [26] - 5:18, 6:7, 27:14, 28:6, 42:14, 65:1, 65:17, 86:9, 108:5, 108:19, 109:1, 110:4, 110:17, 111:2, 115:12, 120:17, 130:7, 136:9, 137:2,</p>				

<p>88:3 moment [3] - 68:6, 110:2, 166:10 Monday [1] - 86:14 money [14] - 47:20, 49:18, 124:17, 140:17, 149:2, 149:3, 149:4, 149:11, 149:12, 149:17, 149:18, 159:5, 161:13, 169:18 month [6] - 12:12, 44:2, 44:5, 51:16, 78:12, 152:16 months [23] - 11:2, 12:7, 14:17, 17:19, 18:5, 21:4, 38:17, 46:19, 47:4, 51:4, 52:15, 52:18, 52:19, 53:8, 53:13, 57:13, 117:6, 121:12, 162:3, 162:10, 185:2 Morgan [1] - 158:7 morning [2] - 117:17, 125:12 mortgage [1] - 162:3 most [11] - 44:10, 56:15, 60:18, 66:1, 80:14, 88:11, 95:3, 98:3, 105:20, 150:9, 166:18 mostly [2] - 102:1, 184:9 motion [28] - 4:17, 4:19, 37:3, 40:6, 41:11, 41:14, 58:13, 82:2, 84:10, 84:12, 84:13, 84:14, 85:6, 85:9, 107:8, 114:4, 114:11, 119:20, 120:3, 127:15, 127:19, 135:14, 147:8, 150:16, 181:6, 187:10, 189:10, 190:1 Mount [1] - 157:17 move [6] - 58:7, 59:8, 62:10, 90:13, 98:6, 129:9 moved [2] - 31:7, 116:9 moving [5] - 5:15, 128:7, 153:1, 156:1, 168:18 MR [76] - 6:17, 6:20, 9:15, 12:15, 15:7, 15:11, 15:17, 16:4, 16:8, 16:18, 17:4, 17:9, 18:1, 18:4,</p>	<p>18:9, 18:12, 18:15, 18:19, 19:6, 21:19, 22:7, 22:9, 22:17, 23:1, 23:17, 25:8, 27:15, 28:4, 31:13, 33:17, 33:20, 34:5, 34:13, 34:20, 35:5, 36:16, 37:12, 38:5, 39:3, 40:5, 40:8, 41:4, 41:18, 57:20, 68:5, 84:8, 108:14, 109:10, 111:13, 112:5, 112:9, 112:12, 112:14, 112:20, 113:11, 114:2, 136:18, 137:4, 137:10, 138:20, 142:10, 143:16, 144:16, 145:1, 146:12, 146:16, 146:19, 147:4, 147:6, 148:15, 163:13, 165:4, 165:18, 167:19, 168:6, 168:9 MS [70] - 3:2, 4:5, 4:10, 4:15, 5:15, 10:7, 32:13, 35:16, 42:1, 43:9, 43:14, 44:1, 44:12, 51:9, 53:16, 53:20, 54:3, 54:7, 54:11, 54:20, 55:11, 57:11, 64:19, 76:7, 86:8, 103:12, 106:2, 108:3, 113:3, 113:13, 113:18, 115:10, 117:9, 119:17, 120:15, 122:19, 123:5, 123:8, 125:15, 126:2, 126:12, 129:7, 132:9, 136:7, 138:9, 140:5, 145:16, 145:19, 146:7, 147:2, 147:5, 150:20, 153:9, 153:15, 153:18, 156:20, 157:7, 158:17, 172:16, 173:1, 174:17, 175:1, 179:11, 179:15, 181:18, 183:17, 186:8, 186:12, 188:2, 189:9 Muehe [8] - 67:15, 78:5, 82:4, 82:6, 82:18, 83:2, 83:13, 84:3 Muehe's [4] - 77:10, 78:6, 80:1, 82:14 Mule [1] - 110:1</p>	<p>multi [1] - 89:6 multi-year [1] - 89:6 multiple [1] - 96:20 Municipal [2] - 1:11, 3:5 MUQUECA [1] - 115:8 Muqueca [4] - 2:10, 115:11, 116:8, 118:6 music [2] - 87:7, 90:14 must [2] - 11:3, 82:20</p>	<p>153:13 negotiation [4] - 161:3, 163:8, 176:13, 176:16 negotiations [2] - 160:4, 178:11 neighbor [3] - 106:1, 121:19, 154:12 neighborhood [1] - 91:19 neighboring [1] - 36:3 neighbors [2] - 128:11, 152:14 net [2] - 164:20, 180:5 never [16] - 40:11, 46:7, 47:5, 53:16, 53:17, 54:3, 54:5, 54:8, 130:19, 131:5, 171:14, 171:17, 172:18, 174:7, 175:4, 176:9 New [13] - 2:4, 42:13, 42:14, 42:20, 43:6, 56:20, 59:17, 89:16, 93:1, 109:8, 139:3, 139:7, 139:17 new [26] - 14:10, 21:9, 21:14, 25:17, 32:20, 34:20, 60:3, 62:7, 62:8, 62:16, 64:3, 66:20, 70:3, 70:18, 93:5, 95:3, 104:3, 104:17, 116:12, 116:17, 141:20, 152:13, 153:2, 162:11, 162:14, 183:15 NEW [1] - 42:10 newer [1] - 90:15 newest [1] - 151:9 next [11] - 37:19, 42:12, 55:5, 66:11, 80:7, 86:8, 108:3, 115:10, 132:10, 132:13, 181:18 NFPA [1] - 21:3 nice [4] - 48:9, 91:19, 124:7, 169:11 Nicorollo [2] - 20:6, 22:14 night [9] - 22:15, 86:16, 93:10, 96:12, 117:18, 118:1, 121:14, 124:14, 125:11 Nine [6] - 86:12, 88:2, 103:10, 103:13, 103:17, 104:5 Ninety [6] - 86:12, 88:2, 103:10,</p>	<p>103:13, 103:17, 104:5 Ninety-Nine [6] - 86:12, 88:2, 103:10, 103:13, 103:17, 104:5 no-value [2] - 161:10, 180:18 noise [3] - 100:13, 100:17, 100:20 nominal [1] - 74:11 non [3] - 108:9, 115:16, 152:18 non-alcoholic [2] - 108:9, 115:16 non-Harvard [1] - 152:18 noncap [1] - 160:15 noncompliance [8] - 26:3, 31:19, 32:6, 32:7, 39:6, 39:10, 39:20, 40:16 noncompliant [11] - 12:6, 20:16, 20:17, 20:18, 21:2, 23:8, 23:12, 23:14, 24:9, 38:8, 38:12 nonconforming [1] - 24:11 none [3] - 37:1, 41:17, 187:8 nonetheless [2] - 34:1, 167:12 nonfinancial [1] - 88:19 nonperformance [1] - 24:10 nontransferable [2] - 161:11, 180:19 Norfolk [1] - 88:12 normal [3] - 51:14, 76:1, 90:11 North [1] - 121:7 northeast [1] - 2:14 NORTHEAST [1] - 136:4 Northeast [2] - 136:7, 136:14 NOT [1] - 191:14 notably [1] - 88:11 Notary [2] - 191:3, 191:10 note [1] - 33:17 noted [1] - 109:16 notes [1] - 191:5 nothing [4] - 69:14, 73:9, 109:13, 172:13 notice [4] - 15:4, 19:8, 55:2, 67:14 noticed [3] - 30:13,</p>
N				
<p>NAKA [1] - 107:20 Naka [2] - 2:8, 108:4 name [29] - 7:5, 43:3, 65:10, 76:17, 101:9, 105:15, 108:19, 109:2, 109:5, 109:6, 110:20, 116:2, 116:18, 137:1, 137:2, 137:5, 137:6, 137:7, 139:13, 147:13, 152:11, 153:10, 164:2, 170:8, 170:16, 178:14, 179:13, 179:20 name's [1] - 105:6 names [2] - 169:3, 169:10 Nashua [2] - 139:4, 139:17 nature [2] - 68:13, 124:3 near [1] - 88:12 nearby [1] - 116:9 necessarily [1] - 84:15 necessary [4] - 10:19, 80:12, 84:3, 117:8 need [18] - 26:16, 51:20, 53:3, 55:14, 58:11, 66:9, 68:10, 74:8, 75:15, 80:1, 83:4, 93:15, 114:19, 123:5, 123:9, 127:1, 147:19, 149:11 needed [4] - 7:18, 28:18, 75:17, 162:6 needs [5] - 61:20, 91:14, 161:6, 161:7, 162:15 negative [1] - 174:9 neglectful [2] - 184:19, 185:1 negotiate [2] - 162:15, 166:20 negotiated [2] - 175:14, 175:17 negotiating [1] -</p>	<p>153:13 negotiation [4] - 161:3, 163:8, 176:13, 176:16 negotiations [2] - 160:4, 178:11 neighbor [3] - 106:1, 121:19, 154:12 neighborhood [1] - 91:19 neighboring [1] - 36:3 neighbors [2] - 128:11, 152:14 net [2] - 164:20, 180:5 never [16] - 40:11, 46:7, 47:5, 53:16, 53:17, 54:3, 54:5, 54:8, 130:19, 131:5, 171:14, 171:17, 172:18, 174:7, 175:4, 176:9 New [13] - 2:4, 42:13, 42:14, 42:20, 43:6, 56:20, 59:17, 89:16, 93:1, 109:8, 139:3, 139:7, 139:17 new [26] - 14:10, 21:9, 21:14, 25:17, 32:20, 34:20, 60:3, 62:7, 62:8, 62:16, 64:3, 66:20, 70:3, 70:18, 93:5, 95:3, 104:3, 104:17, 116:12, 116:17, 141:20, 152:13, 153:2, 162:11, 162:14, 183:15 NEW [1] - 42:10 newer [1] - 90:15 newest [1] - 151:9 next [11] - 37:19, 42:12, 55:5, 66:11, 80:7, 86:8, 108:3, 115:10, 132:10, 132:13, 181:18 NFPA [1] - 21:3 nice [4] - 48:9, 91:19, 124:7, 169:11 Nicorollo [2] - 20:6, 22:14 night [9] - 22:15, 86:16, 93:10, 96:12, 117:18, 118:1, 121:14, 124:14, 125:11 Nine [6] - 86:12, 88:2, 103:10, 103:13, 103:17, 104:5 Ninety [6] - 86:12, 88:2, 103:10,</p>	<p>103:13, 103:17, 104:5 Ninety-Nine [6] - 86:12, 88:2, 103:10, 103:13, 103:17, 104:5 no-value [2] - 161:10, 180:18 noise [3] - 100:13, 100:17, 100:20 nominal [1] - 74:11 non [3] - 108:9, 115:16, 152:18 non-alcoholic [2] - 108:9, 115:16 non-Harvard [1] - 152:18 noncap [1] - 160:15 noncompliance [8] - 26:3, 31:19, 32:6, 32:7, 39:6, 39:10, 39:20, 40:16 noncompliant [11] - 12:6, 20:16, 20:17, 20:18, 21:2, 23:8, 23:12, 23:14, 24:9, 38:8, 38:12 nonconforming [1] - 24:11 none [3] - 37:1, 41:17, 187:8 nonetheless [2] - 34:1, 167:12 nonfinancial [1] - 88:19 nonperformance [1] - 24:10 nontransferable [2] - 161:11, 180:19 Norfolk [1] - 88:12 normal [3] - 51:14, 76:1, 90:11 North [1] - 121:7 northeast [1] - 2:14 NORTHEAST [1] - 136:4 Northeast [2] - 136:7, 136:14 NOT [1] - 191:14 notably [1] - 88:11 Notary [2] - 191:3, 191:10 note [1] - 33:17 noted [1] - 109:16 notes [1] - 191:5 nothing [4] - 69:14, 73:9, 109:13, 172:13 notice [4] - 15:4, 19:8, 55:2, 67:14 noticed [3] - 30:13,</p>		

<p>131:15, 158:14 notices [1] - 19:14 notification [2] - 19:17, 185:13 notified [3] - 6:8, 7:10, 38:11 notify [3] - 32:12, 113:4, 113:7 notion [1] - 60:16 November [25] - 3:14, 3:19, 6:4, 7:10, 8:2, 8:5, 8:17, 9:1, 16:10, 16:17, 16:18, 19:15, 20:19, 21:9, 23:3, 29:12, 29:18, 33:14, 33:19, 34:1, 34:7, 34:16, 35:3, 38:15, 125:18 nowhere [1] - 142:14 NStar [1] - 20:7 number [13] - 7:16, 9:6, 26:14, 69:1, 75:18, 79:5, 96:18, 104:8, 122:15, 127:17, 165:1, 180:6, 184:3 numbers [1] - 132:12 numerous [1] - 6:5</p>	<p>October [8] - 7:11, 11:16, 16:7, 16:11, 16:13, 20:5, 22:3, 125:7 odor [1] - 7:12 OF [8] - 1:1, 1:2, 2:1, 5:12, 191:1, 191:13, 191:14, 191:15 offer [3] - 77:1, 121:16, 122:2 offered [1] - 156:3 offers [1] - 171:14 office [5] - 113:19, 126:19, 126:20, 173:2, 179:12 Offices [1] - 87:15 OFFICIAL [1] - 1:17 offs [1] - 119:6 often [1] - 66:10 Ohm [1] - 188:12 oil [2] - 13:7, 45:3 old [1] - 113:5 Om [17] - 62:6, 91:2, 91:6, 92:5, 93:18, 95:6, 95:15, 95:17, 96:2, 96:3, 96:4, 154:3, 166:9, 175:11, 177:16, 177:18, 180:8 omelets [1] - 118:15 onboard [1] - 111:20 once [2] - 98:5, 123:8 one [68] - 9:11, 11:18, 13:5, 18:1, 18:2, 18:5, 18:6, 18:20, 19:7, 23:20, 27:3, 30:1, 30:16, 30:20, 31:4, 37:19, 37:20, 45:17, 50:4, 57:3, 59:18, 62:20, 63:1, 65:16, 69:2, 70:9, 81:12, 87:11, 90:9, 92:1, 93:11, 93:15, 93:18, 102:19, 103:11, 109:19, 111:10, 116:12, 123:17, 123:18, 126:5, 130:18, 133:8, 135:1, 137:9, 139:5, 150:20, 156:13, 158:1, 158:10, 160:2, 161:8, 164:8, 165:3, 165:5, 165:12, 165:15, 166:3, 168:12, 168:14, 171:16, 174:5, 176:5, 179:14, 182:13, 183:15, 184:17</p>	<p>one-off [1] - 81:12 ones [1] - 172:17 open [18] - 15:9, 15:15, 15:19, 23:2, 25:14, 45:4, 93:8, 96:11, 98:8, 118:1, 121:12, 121:19, 122:1, 122:3, 137:16, 138:18, 180:15, 186:20 opened [9] - 23:4, 73:20, 75:12, 92:4, 92:5, 92:6, 112:17, 154:7, 170:17 opening [6] - 6:14, 6:19, 96:2, 102:8, 112:19, 113:3 operate [5] - 116:12, 154:10, 169:7, 183:14, 185:16 operated [2] - 145:10, 184:16 operating [15] - 66:4, 102:6, 112:4, 112:11, 112:13, 112:15, 113:10, 116:8, 116:16, 131:1, 138:14, 138:17, 141:20, 166:9, 182:18 operation [13] - 28:2, 67:11, 81:12, 86:14, 108:11, 110:5, 115:18, 136:16, 137:18, 139:3, 165:7, 166:11, 182:3 operations [1] - 102:17 operator [5] - 41:2, 62:3, 81:11, 107:1, 162:14 operators [5] - 63:18, 65:20, 66:12, 68:8, 82:4 opinion [2] - 165:6, 165:15 opportunity [5] - 66:10, 68:3, 156:7, 161:2, 164:17 opposed [10] - 41:2, 41:17, 86:3, 107:17, 120:8, 128:17, 150:11, 170:1, 181:13, 189:17 option [1] - 75:16 or.. [1] - 69:10 order [11] - 14:2, 14:13, 17:17, 17:20, 52:9, 57:3, 59:16, 64:12, 73:3, 96:8,</p>	<p>189:8 ordered [1] - 189:18 orders [1] - 19:8 original [1] - 17:17 originally [3] - 71:14, 133:1, 156:13 outdoor [9] - 61:6, 62:12, 93:7, 121:3, 122:7, 123:13, 124:9, 125:5 outside [19] - 29:1, 29:4, 30:14, 89:17, 93:9, 100:19, 101:1, 101:2, 101:18, 102:15, 147:18, 155:14, 156:8, 158:3, 159:13, 160:7, 163:9, 164:19, 165:19 outstanding [1] - 42:19 overall [2] - 66:17, 67:2 overloaded [1] - 13:16 owe [1] - 149:10 owed [3] - 42:19, 49:9, 59:7 own [7] - 15:12, 33:7, 72:8, 91:4, 124:5, 124:12, 141:3 owned [1] - 88:1 owner [16] - 7:17, 27:13, 29:3, 29:15, 33:8, 43:5, 91:1, 105:16, 105:18, 112:16, 152:12, 154:3, 164:1, 175:11, 183:13, 183:18 owners [9] - 15:14, 27:8, 65:20, 112:3, 137:9, 155:15, 157:3, 165:14, 182:13 ownership [2] - 142:7, 183:1</p>	<p>painting [1] - 119:9 panel [1] - 70:12 panels [1] - 70:13 paper [1] - 43:17 paperwork [3] - 29:6, 114:13, 141:11 pardon [1] - 70:2 parenthetically [1] - 13:1 Park [3] - 2:13, 129:11, 129:12 PARK [1] - 129:5 parking [4] - 71:17, 75:1, 75:5, 75:7 part [11] - 45:10, 47:4, 67:2, 71:20, 88:4, 89:10, 90:3, 95:3, 126:8, 128:6, 183:6 particular [5] - 68:18, 110:2, 124:8, 140:9, 168:3 parties [4] - 145:4, 167:5, 173:11, 181:4 partly [2] - 186:10, 186:12 partner [2] - 107:2, 152:3 Partnership [1] - 147:3 parts [1] - 81:1 party [2] - 50:4, 69:10 Parvati [1] - 188:15 pass [1] - 69:12 pass-through [1] - 69:12 passageways [2] - 73:4, 74:5 passed [1] - 185:6 past [8] - 10:1, 48:20, 96:15, 122:7, 124:15, 137:15, 158:10, 161:1 pathway [2] - 77:17, 78:1 patio [6] - 86:19, 86:20, 97:16, 97:17, 121:3 PATRICK [14] - 69:11, 69:17, 70:8, 70:15, 70:18, 70:20, 71:7, 72:6, 72:10, 72:14, 73:6, 73:11, 73:18, 105:15 Patrick [5] - 65:1, 65:15, 65:16, 105:15 patrons [1] - 87:6 Patties [1] - 170:15 pay [4] - 43:20, 45:7, 49:8, 176:6 paying [6] - 52:8,</p>
O				
<p>O'Neil [1] - 179:11 objection [3] - 148:5, 166:15, 167:11 obligated [1] - 141:15 obligation [1] - 52:8 obligations [4] - 59:3, 148:1, 148:3, 186:17 observations [1] - 26:2 observe [1] - 24:7 observed [2] - 24:6, 163:14 obtain [1] - 112:1 obtained [2] - 111:15, 143:5 obviously [5] - 79:13, 81:16, 89:7, 98:6, 169:18 occupancy [6] - 98:13, 126:15, 126:17, 138:19, 139:1, 146:15 occupant [1] - 101:5 occupying [1] - 138:12 occurred [4] - 8:14, 9:12, 22:3, 184:15 occurrence [1] - 18:6 occurring [1] - 29:5</p>			P	
			<p>p.m [8] - 1:15, 3:4, 108:12, 115:19, 120:20, 121:1, 136:17, 190:9 Page [1] - 142:20 PAGE [1] - 2:2 Pages [1] - 191:4 paid [4] - 159:5, 169:17, 177:11, 186:15 paint [1] - 119:7</p>	

<p>157:2, 164:12, 164:13, 169:20, 180:4</p> <p>payment [4] - 43:10, 43:11, 55:12, 59:9</p> <p>pays [2] - 186:6, 186:8</p> <p>peanuts [1] - 164:14</p> <p>Pearl [2] - 91:12, 99:19</p> <p>penalize [1] - 162:14</p> <p>penalty [1] - 26:8</p> <p>people [20] - 7:16, 14:7, 46:20, 50:18, 75:18, 76:2, 90:5, 93:4, 96:18, 100:2, 117:19, 124:13, 124:16, 151:11, 165:13, 166:2, 169:17, 172:19, 173:5, 184:3</p> <p>per [7] - 108:12, 115:19, 120:20, 124:2, 136:17, 140:16</p> <p>Perdoma [1] - 181:20</p> <p>performance [1] - 20:12</p> <p>performances [1] - 61:16</p> <p>performed [2] - 34:12, 159:14</p> <p>perhaps [3] - 39:16, 148:19, 180:18</p> <p>period [6] - 6:4, 11:15, 52:20, 66:19, 172:12, 185:7</p> <p>permission [1] - 15:15</p> <p>permit [9] - 74:17, 78:17, 104:11, 123:8, 125:8, 131:7, 133:19, 134:12, 139:1</p> <p>permits [5] - 133:13, 134:5, 134:8, 138:19, 184:3</p> <p>permitted [1] - 9:3</p> <p>person [3] - 14:10, 27:2, 48:9</p> <p>personnel [1] - 13:10</p> <p>Persons [1] - 67:16</p> <p>persons [2] - 28:1, 68:1</p> <p>perspective [2] - 64:14, 173:13</p> <p>Peter [2] - 65:15, 65:16</p> <p>petition [1] - 77:2</p> <p>petitioners [1] - 87:16</p> <p>phone [1] - 46:8</p> <p>phonetic [2] - 20:6,</p>	<p>78:7</p> <p>phonetic [2] - 87:19, 159:15</p> <p>photo [1] - 23:12</p> <p>photographs [3] - 23:11, 32:2, 38:10</p> <p>photos [1] - 32:8</p> <p>physical [1] - 75:2</p> <p>pictures [3] - 20:18, 23:10, 29:13</p> <p>piece [1] - 141:14</p> <p>pizza [2] - 110:6, 110:14</p> <p>place [16] - 29:3, 36:7, 45:8, 50:16, 60:15, 60:18, 112:6, 116:9, 116:17, 117:14, 117:18, 118:8, 134:16, 134:20, 169:1, 171:10</p> <p>Place [1] - 182:2</p> <p>placed [2] - 35:11, 163:20</p> <p>places [4] - 62:10, 63:20, 118:4, 140:1</p> <p>plan [10] - 62:7, 62:8, 74:16, 78:13, 82:5, 87:1, 90:10, 90:11, 97:13, 97:18</p> <p>plans [9] - 67:5, 78:7, 78:8, 89:5, 90:9, 95:5, 116:6, 116:15, 121:10</p> <p>plate [1] - 96:7</p> <p>plates [3] - 89:19, 90:5, 92:20</p> <p>play [1] - 64:9</p> <p>pleased [2] - 60:9, 66:9</p> <p>pleases [1] - 57:6</p> <p>pleasure [3] - 107:7, 135:12, 187:9</p> <p>pledge [4] - 140:13, 142:16, 154:19, 176:7</p> <p>pledging [1] - 140:18</p> <p>plumbing [2] - 15:13, 134:12</p> <p>plus [1] - 60:6</p> <p>point [16] - 8:12, 16:9, 27:11, 39:16, 54:9, 79:10, 79:15, 83:17, 102:7, 104:2, 104:18, 157:20, 158:13, 162:5, 162:18, 179:5</p> <p>pointed [2] - 88:14, 147:17</p> <p>Police [3] - 3:11, 41:8, 185:17</p>	<p>policy [6] - 157:7, 158:13, 170:4, 173:20, 174:7, 174:8</p> <p>policy-wise [1] - 174:7</p> <p>polishing [1] - 66:17</p> <p>poor [1] - 45:1</p> <p>popular [1] - 63:8</p> <p>Port [1] - 158:4</p> <p>position [1] - 55:4</p> <p>positions [1] - 169:10</p> <p>possibility [1] - 74:19</p> <p>possible [1] - 161:5</p> <p>potential [1] - 100:1</p> <p>potentially [1] - 184:7</p> <p>practically [1] - 175:5</p> <p>practice [1] - 51:15</p> <p>pre [1] - 171:2</p> <p>pre-beer [1] - 171:2</p> <p>precedent [4] - 153:2, 158:2, 159:16, 160:6</p> <p>precedents [1] - 153:3</p> <p>predicated [1] - 85:10</p> <p>predicates [1] - 53:11</p> <p>preexisting [1] - 71:5</p> <p>preference [1] - 81:17</p> <p>premise [1] - 39:19</p> <p>premises [19] - 28:2, 31:5, 48:1, 65:4, 69:5, 71:5, 71:20, 73:20, 75:11, 76:6, 81:2, 81:4, 81:5, 108:10, 115:17, 143:4, 143:6, 147:14, 165:2</p> <p>presence [1] - 63:3</p> <p>present [5] - 3:17, 4:1, 122:17, 137:19, 157:11</p> <p>presented [2] - 145:3, 148:16</p> <p>presenting [1] - 144:11</p> <p>presently [3] - 73:13, 112:5, 114:18</p> <p>present [3] - 105:8, 109:7, 144:2</p> <p>pressure [1] - 48:16</p> <p>presumably [1] - 168:19</p> <p>pretty [3] - 28:11, 36:12, 76:2</p> <p>previous [6] - 10:5, 25:3, 110:8, 112:16, 176:16, 183:13</p> <p>price [7] - 159:4, 164:7, 176:9, 177:1, 177:7, 179:5, 179:6</p> <p>priced [1] - 156:4</p> <p>prices [2] - 153:4, 164:11</p>	<p>pricing [1] - 164:16</p> <p>principal [2] - 28:5, 118:3</p> <p>Print [1] - 158:5</p> <p>priority [1] - 67:1</p> <p>private [8] - 61:9, 86:19, 93:13, 93:15, 93:18, 94:3, 94:8, 123:17</p> <p>privy [1] - 39:4</p> <p>proactively [1] - 79:4</p> <p>probation [1] - 185:2</p> <p>probationary [1] - 185:7</p> <p>problem [10] - 7:15, 9:14, 50:14, 50:17, 51:15, 114:2, 144:11, 168:8, 170:20, 184:10</p> <p>problems [10] - 7:19, 8:4, 8:9, 8:19, 8:20, 9:13, 29:9, 122:18, 124:15, 185:3</p> <p>procedure [1] - 185:19</p> <p>proceeding [1] - 80:7</p> <p>PROCEEDINGS [1] - 2:1</p> <p>proceedings [1] - 79:1</p> <p>process [1] - 170:11</p> <p>produce [3] - 32:2, 32:13, 38:2</p> <p>produced [3] - 32:16, 32:20, 34:19</p> <p>professional [1] - 28:19</p> <p>program [1] - 106:6</p> <p>progress [3] - 8:6, 53:8, 153:13</p> <p>Progressive [4] - 188:13, 188:16, 188:19, 189:2</p> <p>prohibitive [2] - 164:5, 164:16</p> <p>project [1] - 87:18</p> <p>proof [1] - 157:11</p> <p>proofing [2] - 101:5, 101:10</p> <p>proper [1] - 114:12</p> <p>properly [3] - 14:9, 25:12, 42:17</p> <p>Properties [1] - 146:20</p> <p>property [8] - 70:13, 71:13, 88:7, 98:16, 123:17, 130:7, 143:3, 143:7</p> <p>Property [1] - 106:8</p> <p>proposal [1] - 60:10</p> <p>proposed [5] - 61:12, 62:16, 78:15, 86:14,</p>	<p>140:12</p> <p>proposing [2] - 61:5, 130:11</p> <p>prospective [1] - 178:4</p> <p>protect [2] - 62:2, 143:11</p> <p>Protection [6] - 14:3, 14:8, 23:19, 24:1, 24:11, 33:18</p> <p>provide [7] - 26:20, 37:8, 83:4, 83:6, 124:11, 141:15, 173:11</p> <p>provided [3] - 10:20, 21:8, 37:5</p> <p>provision [1] - 163:12</p> <p>public [18] - 76:11, 76:13, 86:20, 105:3, 106:13, 107:5, 119:14, 121:3, 127:12, 135:10, 145:8, 147:11, 154:1, 157:14, 163:3, 178:11, 187:5, 187:7</p> <p>Public [4] - 106:7, 127:17, 191:3, 191:10</p> <p>publically [1] - 175:19</p> <p>pull [1] - 184:6</p> <p>pulled [2] - 54:5, 54:8</p> <p>purchase [10] - 103:2, 140:18, 154:7, 157:10, 163:16, 175:13, 176:18, 177:1, 177:18, 178:19</p> <p>purchased [2] - 155:17, 161:19</p> <p>purported [1] - 150:12</p> <p>purpose [2] - 168:20, 176:8</p> <p>purveyor [1] - 25:17</p> <p>put [12] - 8:8, 30:8, 31:2, 31:10, 52:6, 62:12, 66:20, 74:13, 79:12, 80:7, 162:9, 185:1</p> <p>putting [1] - 158:15</p>
Q				
<p>qualified [1] - 191:3</p> <p>quarterly [2] - 27:1, 29:1</p> <p>question's [1] - 170:3</p> <p>questions [9] - 46:14, 67:6, 76:8, 110:3, 119:10, 119:12,</p>				

126:3, 126:4, 187:3 quickly [1] - 151:12 quite [5] - 62:8, 63:8, 66:2, 81:9, 131:20	161:17, 162:16, 174:8, 185:1, 185:9 REALTY [1] - 129:4 Realty [2] - 2:13, 129:10 reapply [2] - 51:17, 122:8 rear [2] - 73:7, 90:8 Reardon [2] - 1:8, 130:6 REARDON [104] - 4:17, 4:20, 5:2, 5:8, 6:13, 6:18, 7:2, 16:20, 17:6, 18:7, 18:10, 18:14, 18:17, 24:12, 26:9, 28:10, 28:15, 41:13, 50:10, 54:16, 58:13, 58:19, 59:19, 69:8, 69:14, 70:6, 70:9, 71:13, 73:7, 74:7, 75:6, 75:20, 79:10, 80:4, 82:9, 84:16, 86:1, 94:5, 94:19, 95:2, 98:12, 98:15, 99:5, 99:13, 101:19, 102:5, 103:9, 103:15, 103:20, 104:14, 104:18, 107:8, 107:16, 111:7, 111:10, 113:15, 114:3, 114:11, 114:17, 115:4, 119:2, 119:5, 120:1, 120:5, 127:15, 128:16, 130:6, 131:6, 132:14, 133:2, 133:6, 133:12, 133:19, 134:3, 134:10, 134:18, 135:1, 135:5, 135:16, 135:19, 140:3, 146:10, 146:17, 149:19, 150:15, 153:7, 156:13, 160:13, 160:18, 169:2, 172:11, 177:14, 181:8, 181:11, 184:1, 185:11, 186:19, 187:4, 187:12, 187:16, 189:12, 189:16, 190:3, 190:6 reason [9] - 6:8, 12:19, 13:1, 24:15, 27:20, 31:2, 79:7, 166:15, 175:15 reasonable [1] - 161:8	reasons [3] - 23:20, 161:8, 162:17 receipt [1] - 28:20 receive [2] - 19:14, 43:11 received [9] - 6:1, 19:11, 19:17, 43:8, 43:9, 44:6, 49:3, 67:14, 88:20 recent [2] - 66:1, 175:12 recently [5] - 47:6, 131:4, 164:8, 166:18, 177:6 receptacles [1] - 124:12 recognize [1] - 175:7 recognized [1] - 81:19 recommend [1] - 27:5 recommendation [1] - 77:7 recommending [1] - 26:5 reconfigure [1] - 77:9 record [17] - 7:5, 10:4, 32:14, 35:9, 39:15, 43:4, 46:20, 56:19, 65:10, 65:17, 67:7, 76:17, 88:17, 105:5, 116:2, 130:4, 191:4 RECORD [1] - 1:17 records [2] - 32:3, 32:17 recover [1] - 49:18 rectangular [1] - 71:18 rectify [2] - 12:8, 96:16 RED [1] - 64:16 Red [8] - 2:6, 56:17, 60:7, 64:20, 66:4, 66:9, 105:16, 105:19 reduce [1] - 64:1 reducing [1] - 153:3 reestablish [3] - 50:1, 50:3, 52:5 REEVES [4] - 55:20, 56:20, 59:17, 59:20 Reeves [5] - 56:1, 59:15, 88:14, 106:5, 162:7 refer [1] - 144:1 reference [2] - 68:19, 68:20 referring [2] - 38:7, 39:5 refinance [8] - 188:4, 188:6, 188:9, 188:12, 188:15, 188:18, 189:1, 189:4 reflect [1] - 150:10	reflection [1] - 82:19 regard [9] - 13:13, 17:11, 22:18, 109:17, 110:3, 143:20, 166:17, 167:1, 168:3 regarding [1] - 10:14 regret [1] - 168:7 regular [2] - 46:19, 66:8 regulations [3] - 107:10, 163:7, 169:7 regulators [1] - 20:10 relate [1] - 110:8 related [1] - 68:12 relates [1] - 142:19 relating [1] - 24:14 relationship [1] - 140:8 relative [6] - 37:9, 109:14, 110:5, 142:12, 142:15, 144:4 reliance [1] - 25:10 relieved [1] - 186:2 remain [4] - 72:11, 95:11, 96:11, 116:20 remains [1] - 69:17 remarks [1] - 27:7 remedy [1] - 7:19 remedying [1] - 8:4 remember [4] - 48:17, 161:18, 170:16, 172:9 reminded [1] - 147:9 reminiscent [1] - 62:7 remove [1] - 97:19 removed [1] - 129:8 renew [1] - 43:18 renovated [2] - 88:5, 116:14 renovation [1] - 67:2 renovations [1] - 119:2 rent [4] - 45:8, 64:1, 123:20, 141:17 reopen [3] - 9:3, 49:12, 116:15 repair [1] - 14:4 repairs [1] - 56:12 replace [1] - 72:16 report [17] - 6:1, 6:2, 6:9, 7:1, 10:20, 12:16, 13:20, 21:19, 22:1, 25:6, 30:9, 35:7, 39:4, 41:5, 58:4, 81:19, 151:8 Reporter [1] - 191:3 REPORTER [1] - 191:15	REPORTERS [1] - 1:17 reporting [2] - 21:20, 186:17 reports [1] - 39:17 represent [4] - 65:18, 67:10, 137:12, 157:18 representations [1] - 144:14 representative [1] - 6:11 Representative [1] - 110:1 represented [6] - 7:17, 19:2, 68:9, 166:3, 166:18, 178:17 representing [3] - 4:1, 6:7, 108:17 represents [3] - 66:15, 70:3, 75:4 REPRODUCTION [1] - 191:14 reputation [1] - 91:7 requested [3] - 42:1, 59:16, 143:11 requesting [2] - 84:13, 137:20 require [1] - 145:14 required [4] - 21:2, 29:8, 104:11, 133:14 requirement [2] - 13:14, 83:2 requirements [7] - 12:1, 24:2, 33:12, 78:16, 82:7, 82:19, 146:1 requires [2] - 24:19, 110:2 research [1] - 170:12 resell [1] - 49:17 reservations [1] - 67:19 residential [2] - 98:17, 99:7 resolution [1] - 114:1 resolve [1] - 59:6 resolved [5] - 8:13, 8:19, 9:1, 21:3, 21:5 resort [1] - 157:9 respect [10] - 11:19, 78:5, 102:17, 140:11, 148:6, 163:7, 163:11, 168:1, 174:15, 178:5 RESPECT [1] - 191:14 respectfully [1] - 68:14 respond [1] - 13:11 responded [4] - 13:12,
R				
radio [1] - 87:11 rafferty [1] - 85:1 RAFFERTY [20] - 68:5, 69:19, 71:3, 71:11, 71:16, 72:12, 72:18, 73:16, 74:16, 75:2, 75:9, 78:4, 79:19, 80:14, 80:20, 82:15, 83:9, 83:20, 85:4, 85:12 Rafferty [5] - 65:11, 65:12, 67:13, 77:19, 82:3 RAFFTERY [2] - 65:8, 73:19 raised [1] - 152:18 raises [1] - 145:6 RAJ [4] - 147:13, 148:8, 148:12, 180:1 Raj [3] - 147:1, 147:13, 180:1 range [2] - 61:18, 164:7 ranges [1] - 177:7 ranked [1] - 92:7 Rashpal [2] - 5:18, 28:6 rate [1] - 24:16 rather [2] - 63:15, 68:15 RATIFICATIONS [2] - 2:17, 187:20 ratications [1] - 188:3 ratify [1] - 3:14 RE [1] - 1:4 reach [1] - 177:1 reaching [1] - 174:16 reading [2] - 34:9, 73:5 ready [5] - 4:13, 111:18, 145:7, 180:15 real [1] - 63:16 reality [2] - 60:13, 150:11 really [22] - 48:7, 48:8, 48:9, 56:2, 56:10, 56:13, 61:17, 62:9, 62:15, 63:4, 92:18, 100:5, 131:20, 151:20, 157:1, 157:4, 160:1,				

<p>16:4, 20:2, 20:4 response [10] - 36:20, 107:6, 107:18, 114:9, 119:16, 127:14, 128:18, 135:11, 163:4, 181:14 responsibilities [3] - 25:5, 123:14, 147:10 responsibility [4] - 29:2, 29:15, 41:1, 83:18 responsible [3] - 28:1, 30:15, 186:13 RESTAURANT [1] - 115:8 Restaurant [14] - 2:10, 42:14, 43:6, 62:20, 88:2, 91:2, 91:6, 92:5, 115:11, 116:8, 118:7, 154:3, 175:11, 177:16 restaurant [60] - 5:19, 8:12, 9:7, 13:3, 13:10, 15:1, 15:3, 15:5, 15:8, 15:14, 15:15, 15:19, 22:19, 23:2, 24:2, 42:16, 60:3, 61:13, 62:5, 63:15, 65:2, 67:1, 85:11, 86:11, 89:1, 89:18, 90:7, 90:10, 91:3, 91:4, 91:17, 91:18, 91:20, 92:4, 92:8, 92:9, 92:13, 95:17, 95:19, 96:18, 99:4, 100:15, 103:7, 105:11, 110:13, 122:1, 124:18, 136:12, 137:16, 138:2, 139:7, 139:16, 154:7, 155:6, 155:15, 164:2, 167:9, 167:10, 180:14, 183:2 restaurant/bar [1] - 61:6 restaurant/lounge [1] - 89:13 restauranteurs [1] - 90:16 restaurants [7] - 90:12, 92:3, 96:4, 138:5, 139:4, 184:16, 185:16 restriction [1] - 168:15 result [3] - 15:4, 60:19, 132:7 resulted [1] - 162:10</p>	<p>retail [3] - 66:11, 71:19, 81:6 retailer [1] - 71:1 revenue [1] - 90:18 review [9] - 24:16, 37:4, 37:13, 51:16, 74:17, 78:20, 79:9, 79:13, 127:16 Review [1] - 74:16 reviews [1] - 78:8 revisit [1] - 36:14 revocation [2] - 42:12, 58:9 REVOICATION [2] - 2:4, 42:10 revoke [1] - 59:8 revoked [1] - 54:9 Ribbon [2] - 56:17, 60:7 right-hand [1] - 71:4 rights [3] - 140:11, 141:2, 141:4 Riordan [1] - 3:12 Road [1] - 109:8 road [1] - 80:6 Robert [3] - 1:7, 3:11, 130:8 rOBERT [1] - 51:6 ROBERT [118] - 21:14, 29:16, 31:17, 32:1, 32:9, 32:15, 33:2, 33:6, 34:8, 34:17, 35:20, 37:2, 37:14, 41:16, 49:20, 51:1, 51:10, 51:14, 52:16, 53:19, 54:5, 54:8, 58:2, 58:20, 59:5, 59:13, 70:16, 70:19, 71:2, 71:9, 72:4, 73:2, 73:9, 74:4, 76:10, 77:6, 82:10, 82:12, 84:14, 84:20, 85:8, 85:13, 85:18, 86:2, 94:12, 94:16, 95:5, 95:10, 95:14, 96:13, 99:9, 100:1, 100:9, 100:20, 107:12, 107:15, 110:20, 111:5, 112:3, 112:8, 112:10, 112:13, 112:18, 113:9, 114:15, 115:1, 115:5, 118:17, 118:20, 119:12, 119:19, 120:6, 122:14, 126:4, 127:1, 128:1, 128:10, 128:15, 130:8, 130:13,</p>	<p>131:3, 131:11, 132:2, 132:19, 133:4, 133:10, 133:17, 134:19, 135:14, 135:20, 138:8, 138:11, 139:12, 139:15, 139:20, 141:1, 142:6, 144:20, 148:5, 149:8, 149:14, 150:5, 150:17, 152:6, 165:16, 176:12, 176:20, 181:6, 181:12, 185:6, 185:14, 186:16, 187:10, 187:15, 189:8, 189:10, 189:15, 190:7 Roca [1] - 159:12 role [4] - 64:9, 78:6, 137:8, 182:12 Room [2] - 1:12, 63:19 room [15] - 3:7, 71:19, 73:14, 87:2, 87:3, 90:8, 93:20, 94:6, 94:13, 97:19, 98:1, 98:7, 98:11, 102:14 rooms [5] - 93:16, 94:3, 97:1, 97:4, 98:6 Roosevelt [1] - 63:3 roped [1] - 123:20 roughly [1] - 70:1 rules [3] - 125:14, 125:16, 163:7 running [1] - 152:2</p>	<p>141:18, 142:1, 142:3, 142:5 Sally [3] - 42:14, 43:1, 43:5 SALLY [25] - 43:5, 43:12, 43:17, 44:4, 44:14, 46:18, 47:14, 47:17, 47:19, 49:10, 49:14, 50:3, 50:11, 51:5, 51:7, 51:12, 52:14, 54:2, 54:13, 55:1, 55:8, 57:19, 58:12, 59:4, 59:12 Salon [1] - 158:4 SAME [1] - 191:14 sandwiches [3] - 110:7, 110:14, 122:3 satisfaction [1] - 77:14 satisfactorily [1] - 167:6 satisfactory [1] - 57:20 satisfied [1] - 80:10 satisfy [1] - 77:10 Saturday [1] - 86:16 saw [2] - 68:17, 141:11 scape [1] - 61:9 scared [1] - 47:7 scene [3] - 20:8, 22:15, 77:9 Schools [1] - 106:7 screen [1] - 87:11 screens [1] - 87:10 screwed [2] - 45:9, 45:10 se [1] - 140:16 Sea [1] - 109:3 seal [1] - 191:8 SEAN [10] - 87:13, 97:12, 98:14, 98:18, 99:15, 100:7, 103:18, 104:1, 104:16, 105:1 search [1] - 163:8 season [3] - 122:8, 125:5, 125:17 seasonal [1] - 121:2 seating [22] - 61:6, 61:10, 62:12, 68:14, 74:9, 86:18, 87:3, 90:10, 97:8, 97:13, 97:14, 97:15, 104:13, 108:10, 115:17, 122:7, 122:8, 123:13, 124:9, 127:3, 127:16, 146:6 seats [29] - 65:6, 65:7,</p>	<p>66:16, 79:11, 80:11, 86:18, 86:19, 86:20, 93:7, 103:1, 103:3, 103:5, 103:7, 103:8, 103:16, 103:19, 104:6, 104:8, 104:12, 104:15, 104:20, 121:3, 126:7, 127:17, 154:8, 154:10, 154:11, 183:19, 183:20 second [20] - 4:19, 7:14, 18:2, 30:16, 41:14, 58:14, 99:5, 115:1, 117:11, 120:1, 127:19, 128:1, 131:1, 133:15, 135:1, 135:16, 136:15, 154:17, 162:2, 189:12 seconded [5] - 84:16, 107:12, 120:3, 181:8, 187:12 secondly [1] - 13:19 Section [2] - 142:20, 143:1 section [1] - 147:17 Security [1] - 143:1 security [1] - 143:3 see [32] - 8:2, 32:3, 32:9, 33:17, 34:18, 37:7, 37:10, 38:1, 45:1, 47:2, 47:5, 55:17, 64:5, 68:3, 69:20, 70:4, 70:17, 73:1, 88:16, 89:4, 90:4, 91:8, 93:8, 97:18, 98:2, 106:5, 106:12, 127:1, 142:14, 161:4, 179:11, 184:6 seeing [3] - 85:2, 187:4, 187:8 seek [1] - 181:4 seeking [1] - 81:6 seeks [1] - 67:11 seem [2] - 121:15, 144:13 sell [21] - 48:2, 48:5, 50:1, 50:7, 50:20, 56:8, 152:17, 154:16, 155:6, 156:11, 156:12, 159:19, 175:4, 175:14, 175:17, 176:3, 176:5, 176:9, 177:8, 177:12, 180:9 seller [3] - 157:18,</p>
S				
	<p>safe [1] - 26:12 safeguards [1] - 36:7 Safety [1] - 33:1 safety [4] - 8:9, 10:14, 132:20, 135:3 SAJAL [14] - 137:6, 137:7, 137:9, 140:15, 141:3, 141:9, 141:16, 142:9, 144:7, 149:1, 149:10, 149:16, 150:2, 150:6 Sajal [1] - 137:6 sale [10] - 153:5, 153:12, 156:9, 164:10, 175:13, 175:20, 176:2, 176:18, 178:19, 179:10 sales [5] - 141:13,</p>			

<p>171:6, 178:17 sellers [1] - 179:7 selling [3] - 52:1, 172:5, 179:2 sells [1] - 156:6 send [5] - 26:19, 43:6, 43:17, 44:14, 48:13 sent [6] - 33:18, 34:15, 35:7, 38:8, 48:6, 49:4 separate [7] - 17:7, 17:8, 70:13, 70:14, 79:20, 132:17, 148:4 separately [1] - 158:20 separation [1] - 75:7 September [4] - 14:4, 17:13, 19:3, 37:20 serious [4] - 27:20, 31:9, 39:2, 50:14 served [2] - 108:9, 115:16 service [1] - 124:4 services [2] - 24:1, 33:3 Services [7] - 15:13, 20:6, 22:14, 109:20, 111:16, 126:10, 134:9 set [7] - 12:20, 36:2, 93:1, 107:10, 128:20, 176:9, 191:8 setting [2] - 13:18, 153:2 setup [2] - 125:10, 183:17 seven [8] - 26:4, 26:7, 108:12, 115:19, 120:20, 121:1, 125:3, 136:17 several [2] - 67:8, 166:8 Shanti [1] - 96:4 Shawn [1] - 87:14 Shiva [1] - 188:13 Shorthand [1] - 191:2 shortly [1] - 39:10 should've [1] - 11:14 show [7] - 17:12, 53:8, 87:6, 87:8, 127:3 showed [1] - 11:18 shown [1] - 14:6 shows [3] - 14:15, 35:10, 152:1 shut [6] - 8:12, 25:15, 26:3, 26:7, 30:12, 34:2 shut-down [1] - 26:7 side [4] - 70:2, 71:4, 73:10, 88:7</p>	<p>Sidel [1] - 106:4 sides [2] - 69:13, 170:2 sidewalk [2] - 86:20, 121:4 Sidney [1] - 99:20 sign [6] - 11:3, 77:13, 82:14, 83:2, 83:14, 119:6 sign-off [4] - 11:3, 82:14, 83:2, 83:14 sign-offs [1] - 119:6 signatures [1] - 111:15 signed [2] - 145:3, 146:11 significance [1] - 25:18 significant [2] - 8:9, 9:20 signify [3] - 41:15, 58:17, 135:18 signing [2] - 154:19, 186:15 silence [1] - 3:8 similar [1] - 137:17 Singh [2] - 5:18, 28:6 sit [1] - 57:1 site [3] - 56:12, 60:5, 66:3 situation [10] - 12:8, 45:20, 155:3, 160:19, 162:19, 184:14, 184:19, 184:20, 186:1 situations [1] - 174:9 six [15] - 11:2, 12:7, 12:12, 21:4, 38:17, 46:19, 47:4, 51:16, 52:14, 53:7, 53:13, 57:13, 121:12, 185:2 six-month [2] - 12:12, 51:16 size [1] - 103:10 skeleton [1] - 57:9 skills [1] - 191:6 slightly [3] - 72:1, 123:19, 162:19 small [5] - 47:10, 63:1, 69:11, 92:20, 96:7 smaller [2] - 90:5, 90:6 smoking [1] - 124:2 SNACK [1] - 108:1 Snack [3] - 2:9, 108:5, 109:11 snack [1] - 117:1 so.. [5] - 47:11, 76:3, 94:4, 113:17, 125:3 sold [6] - 108:9,</p>	<p>115:16, 156:16, 157:20, 164:1, 177:6 soliciting [1] - 124:16 Solomon [10] - 87:17, 91:9, 105:17, 154:2, 161:12, 163:18, 164:10, 166:5, 172:3, 175:10 SOLOMON [28] - 91:9, 94:7, 94:14, 94:18, 95:1, 95:4, 95:7, 95:12, 95:18, 96:19, 98:20, 99:8, 99:11, 100:4, 100:16, 101:7, 102:1, 102:9, 102:13, 102:19, 154:2, 156:15, 156:17, 157:1, 175:10, 176:15, 177:3, 177:16 Solomon's [1] - 106:18 solution [1] - 58:1 someone [5] - 62:4, 84:12, 155:13, 178:2, 182:18 Somerville [1] - 43:15 sometime [3] - 40:16, 44:5, 44:17 sometimes [5] - 79:12, 81:3, 125:7, 161:4, 162:13 somewhere [2] - 162:1, 176:10 son [2] - 55:4, 56:4 son-in-law [1] - 56:4 soon [1] - 96:8 sooner [2] - 39:12, 40:2 sorry [13] - 9:18, 16:1, 16:19, 20:3, 51:10, 57:4, 111:6, 112:12, 114:5, 128:4, 147:8, 170:16, 183:15 sort [2] - 26:16, 63:6 sorta [1] - 39:18 sound [4] - 101:4, 101:10, 101:17, 102:14 soundproof [1] - 101:16 soundproofing [2] - 101:4, 102:10 sounds [3] - 11:12, 143:13, 145:9 SoundTech [1] - 101:9 South [3] - 122:1, 123:19, 124:16 Southern [1] - 139:7</p>	<p>Sovereign [2] - 148:18, 150:2 space [26] - 61:14, 61:15, 66:11, 66:14, 66:17, 67:4, 67:20, 69:12, 70:3, 71:18, 81:6, 88:18, 89:4, 92:18, 93:15, 94:1, 94:8, 94:11, 100:17, 101:10, 101:16, 101:17, 103:4, 104:17, 138:12, 173:6 speaker [1] - 175:8 speakers [1] - 100:18 speaking [3] - 106:17, 122:11, 151:16 speaks [1] - 97:12 specials [1] - 122:2 specifically [2] - 144:18, 183:4 spells [1] - 169:8 spend [1] - 155:10 spent [4] - 155:4, 161:14, 175:6, 180:13 spoken [2] - 28:4, 109:19 Sports [1] - 66:7 spot [1] - 62:16 sprinkler [2] - 70:7, 70:10 Square [59] - 42:3, 42:6, 60:4, 60:5, 60:9, 60:16, 60:17, 60:20, 61:1, 61:20, 62:6, 62:9, 62:17, 63:10, 64:7, 76:20, 88:6, 89:9, 91:12, 91:14, 91:16, 92:4, 92:13, 92:15, 93:12, 94:9, 94:10, 98:18, 99:1, 103:7, 105:8, 106:15, 106:17, 106:20, 129:7, 152:19, 152:20, 153:4, 153:12, 154:4, 156:6, 158:3, 158:8, 158:9, 159:14, 160:8, 163:16, 164:6, 164:15, 165:8, 172:8, 172:10, 172:13, 176:2, 177:5, 177:7, 177:17, 178:1, 179:10 square [4] - 60:17, 62:2, 161:19, 164:18 ss [1] - 191:1</p>	<p>staff [5] - 55:5, 57:9, 82:5, 124:6, 125:9 STAFF [1] - 1:9 stage [3] - 61:15, 78:20, 80:3 stand [3] - 4:9, 142:4, 161:6 standard [1] - 85:14 standards [1] - 12:20 standing [7] - 65:7, 87:1, 97:8, 97:9, 97:20, 98:1, 98:9 standing [1] - 65:7 start [2] - 18:17, 116:14 started [3] - 91:18, 102:20, 103:6 starting [1] - 79:4 starts [1] - 125:19 State [1] - 109:20 state [11] - 7:5, 21:13, 24:18, 24:20, 43:3, 76:16, 92:10, 108:19, 116:1, 170:8, 179:20 statement [1] - 41:3 stating [1] - 147:20 status [15] - 42:18, 44:7, 44:18, 46:16, 51:18, 52:2, 52:10, 52:12, 53:2, 53:5, 53:7, 53:17, 55:13, 57:16, 169:14 stay [3] - 26:19, 80:11, 113:11 staying [1] - 113:9 stenographic [1] - 191:5 step [1] - 159:9 steps [1] - 8:3 sticker [3] - 23:13, 23:14, 25:1 stickers [1] - 31:18 still [7] - 21:1, 29:2, 69:16, 95:8, 112:4, 174:4, 178:18 stood [1] - 8:3 stop [1] - 45:7 storage [5] - 129:14, 129:16, 129:19, 130:1, 133:7 store [3] - 72:3, 72:5, 72:7 storefronts [2] - 88:10, 92:1 story [1] - 111:11 stove [1] - 13:6 stoves [1] - 13:18 straightening [1] - 136:2</p>
---	---	--	---	--

<p>strange [1] - 184:2 streams [1] - 90:17 Street [37] - 5:20, 65:3, 65:20, 66:2, 66:5, 88:12, 91:12, 94:15, 94:17, 99:10, 99:11, 99:19, 99:20, 100:3, 101:20, 108:7, 109:3, 109:12, 111:8, 111:9, 115:14, 116:4, 116:12, 121:7, 123:18, 136:11, 136:14, 136:15, 137:3, 137:13, 138:3, 138:4, 157:17, 158:7, 158:9, 170:18, 171:17 street [11] - 61:9, 88:8, 89:16, 90:1, 92:19, 94:13, 97:17, 99:14, 102:12, 116:10, 152:13 strictly [2] - 148:13, 177:13 strong [1] - 91:7 structural [1] - 69:14 structure [1] - 9:12 students [1] - 121:14 study [2] - 60:19, 162:8 stuff [1] - 184:4 subject [5] - 79:8, 80:19, 107:9, 114:12, 127:16 submit [1] - 181:5 submitted [3] - 4:18, 87:3, 131:14 subrogate [1] - 25:7 subs [1] - 110:6 subsequent [1] - 22:2 subsequently [1] - 38:19 subtext [1] - 56:13 successful [2] - 63:17, 64:3 successor [1] - 66:7 suffer [1] - 157:4 sufficient [4] - 36:7, 74:6, 78:1, 98:11 suggest [8] - 53:3, 58:3, 67:9, 68:14, 77:12, 82:1, 166:14, 173:7 suggested [2] - 35:2, 151:17 suggesting [4] - 17:12, 26:5, 26:6, 81:18</p>	<p>suggests [1] - 68:11 suit [2] - 166:11, 166:12 summarize [1] - 130:11 summer [1] - 122:6 Superintendent [3] - 3:16, 3:20, 5:9 supervisors [1] - 125:2 supplement [1] - 132:17 support [11] - 19:5, 60:10, 60:16, 77:1, 88:15, 88:20, 105:10, 105:12, 105:16, 106:18, 151:7 supported [1] - 63:4 supposed [3] - 14:9, 31:14, 59:3 supposedly [1] - 171:14 suppress [1] - 20:14 suppression [1] - 30:17 surrounding [1] - 128:11 suspended [1] - 54:10 system [29] - 10:17, 12:19, 13:5, 13:16, 14:1, 14:9, 16:15, 17:2, 17:4, 17:5, 17:17, 20:15, 21:12, 23:13, 23:14, 24:14, 28:17, 30:11, 30:17, 30:18, 32:7, 38:12, 45:1, 46:2, 70:7 systems [9] - 17:1, 17:3, 20:14, 20:15, 24:4, 24:18, 29:11, 33:16, 81:8</p>	<p>130:15, 132:17, 132:20, 133:1, 133:3, 133:5, 133:7, 133:8, 133:15, 134:4 tanks [4] - 129:15, 129:17, 130:18, 133:7 tapas [3] - 90:2, 90:19, 92:20 task [1] - 11:1 Taslim [2] - 86:9, 87:17 Tavern [1] - 66:3 taxes [1] - 186:15 Taxi [1] - 189:5 taxicab [1] - 188:3 Tegh [1] - 188:19 Temple [1] - 66:1 ten [1] - 46:19 Tenant [1] - 143:1 tenant [5] - 46:7, 99:1, 130:16, 133:11, 176:17 tenants's [1] - 143:6 term [1] - 92:17 terminate [1] - 27:5 terminated [4] - 33:3, 33:5, 33:6, 33:9 termination [1] - 19:17 terms [22] - 35:11, 52:3, 52:8, 53:9, 59:7, 60:12, 69:10, 77:14, 80:9, 91:17, 96:17, 107:10, 123:14, 127:17, 141:16, 142:4, 145:9, 145:13, 150:9, 169:6, 170:3, 184:5 testify [1] - 56:2 testimony [1] - 32:16 th [1] - 125:11 Thakur [1] - 136:9 Thanksgiving [1] - 44:17 THE [7] - 1:17, 108:1, 136:5, 191:13, 191:14, 191:15, 191:15 the.. [1] - 133:18 Theater [4] - 42:3, 42:6, 60:5, 99:2 theater [1] - 101:11 Theatre [4] - 63:10, 88:6, 98:19, 129:7 theirs [1] - 156:12 THEKUR [13] - 137:1, 137:2, 138:13, 138:17, 139:2,</p>	<p>139:14, 139:19, 140:2, 145:12, 146:2, 146:13, 156:16, 178:5 themselves [1] - 36:9 thereafter [1] - 39:10 therefore [1] - 164:17 thinking [5] - 51:20, 52:3, 82:10, 84:9, 100:9 thinks [3] - 143:14, 155:7, 180:9 third [6] - 30:20, 61:14, 74:13, 74:19, 75:11, 75:17 THIS [1] - 191:13 three [13] - 8:11, 9:20, 10:15, 14:17, 15:7, 17:19, 29:17, 60:6, 64:2, 93:18, 96:8, 153:11, 156:9 throughout [2] - 88:10, 124:14 thumbnails [1] - 23:11 Thursday [4] - 4:8, 86:16, 112:2, 112:7 tied [2] - 17:7, 154:20 tight [1] - 96:17 TIME [1] - 1:15 timely [1] - 27:1 title [1] - 112:6 TO [1] - 191:14 today [10] - 5:6, 39:13, 40:2, 40:18, 43:7, 67:14, 72:20, 78:11, 82:8, 139:1 today's [1] - 109:16 together [5] - 17:7, 45:9, 45:10, 162:9, 170:12 Tom [1] - 7:8 tomorrow [5] - 43:20, 57:9, 79:4, 111:19, 112:2 tonight [6] - 3:9, 5:16, 27:14, 42:5, 76:20, 87:15 tonight's [1] - 42:4 took [7] - 21:10, 31:7, 162:2, 183:5, 184:15, 186:3, 187:1 Toomey [2] - 106:4, 119:17 top [7] - 26:15, 69:1, 79:12, 80:7, 92:7, 99:1, 101:11 total [3] - 94:20, 98:13, 135:7 totally [1] - 104:17 towards [1] - 8:4</p>	<p>Towers [1] - 63:3 track [1] - 67:7 traditional [3] - 83:3, 89:18, 90:1 training [1] - 146:1 trainings [1] - 145:14 transaction [1] - 167:6 TRANSCRIPT [1] - 191:14 transcription [1] - 191:5 transfer [12] - 86:10, 87:20, 104:3, 109:11, 136:11, 138:1, 138:3, 139:16, 166:16, 167:2, 167:13, 185:15 transferred [7] - 103:19, 158:5, 158:8, 164:9, 170:13, 178:20, 182:17 transferring [2] - 146:8, 168:14 transfers [3] - 158:18, 168:8, 168:12 transition [1] - 90:13 transported [2] - 7:13, 22:6 trash [1] - 124:12 travel [2] - 102:15, 104:8 traveling [1] - 101:18 tremendous [2] - 62:18 trend [1] - 64:4 tried [2] - 45:18, 171:12 Trinity [1] - 106:8 truck [1] - 170:17 true [2] - 62:13, 191:5 Trust [1] - 189:6 trust [1] - 167:14 try [16] - 44:8, 45:12, 45:20, 46:2, 48:9, 48:14, 49:12, 50:1, 50:4, 50:17, 52:4, 85:16, 93:5, 169:9, 171:4, 184:9 trying [17] - 47:19, 56:8, 104:14, 104:19, 149:16, 152:17, 154:16, 155:6, 156:11, 156:12, 162:18, 169:12, 170:11, 171:19, 171:20, 174:15, 180:14 Tuesday [2] - 1:14, 3:4</p>
T				
<p>table [2] - 96:9, 124:4 tables [7] - 68:13, 69:1, 78:15, 90:6, 97:19, 98:7, 124:7 tagged [3] - 14:8, 20:16, 23:8 tags [2] - 20:19, 24:5 take-out [1] - 122:2 takeover [1] - 109:13 tall [1] - 65:16 Tamarind [6] - 152:12, 166:18, 167:1, 167:8, 167:9, 178:15 tank [13] - 129:19, 129:20, 130:2,</p>				

<p>TV ^[1] - 99:4 TVs/video ^[1] - 87:10 twice ^[1] - 11:15 two ^[38] - 7:12, 17:1, 17:3, 17:6, 17:8, 20:13, 22:5, 24:13, 31:16, 32:17, 33:10, 50:15, 51:6, 51:7, 53:20, 62:19, 63:19, 70:13, 70:14, 72:16, 73:4, 73:11, 73:16, 74:5, 74:12, 81:1, 85:6, 90:9, 118:4, 118:12, 123:16, 126:11, 130:18, 154:5, 160:20, 164:8, 176:20, 180:6 TWO ^[1] - 181:16 Two ^[3] - 2:16, 181:19, 182:14 type ^[4] - 67:10, 92:9, 110:6, 147:15 typical ^[2] - 71:18, 125:5 typically ^[3] - 51:2, 52:17, 185:17</p>	<p>universe ^[1] - 60:18 University ^[1] - 139:8 unknown ^[4] - 152:11, 153:10, 178:14, 179:13 unless ^[3] - 34:17, 78:18, 169:5 UNLESS ^[1] - 191:15 unrestricted ^[1] - 143:2 unsafe ^[1] - 30:2 unspeakably ^[1] - 61:4 unusual ^[1] - 79:1 up ^[40] - 3:15, 7:14, 13:7, 13:18, 15:15, 33:10, 35:19, 39:18, 41:5, 51:16, 55:7, 57:14, 66:17, 76:16, 82:5, 84:19, 98:8, 112:17, 112:19, 125:11, 125:16, 126:9, 127:8, 128:20, 137:16, 149:16, 152:8, 154:6, 154:13, 154:20, 159:9, 162:4, 164:9, 167:20, 170:15, 171:15, 172:3, 179:5, 179:20, 186:7 updating ^[1] - 186:14 upgrade ^[1] - 62:2 upstairs ^[1] - 101:18 usage ^[1] - 168:19 useful ^[2] - 173:14, 174:14 uses ^[1] - 81:11</p>	<p>vice ^[1] - 97:16 victims ^[1] - 7:13 victualer ^[9] - 108:6, 115:13, 120:18, 126:9, 136:9, 138:15, 143:17, 182:1, 183:20 victualer's ^[1] - 112:1 video ^[1] - 87:9 Video ^[1] - 88:13 VIKTOR ^[2] - 152:11, 153:10 VIKTOR ^[2] - 178:14, 179:13 Viktor ^[2] - 152:12, 178:14 Vincent ^[1] - 122:11 violations ^[5] - 8:11, 8:13, 29:18, 29:19, 76:5 visited ^[1] - 75:9 vote ^[3] - 52:13, 58:11, 58:15 voted ^[2] - 10:15, 52:20</p>	<p>44:1, 44:12, 51:9, 53:16, 53:20, 54:3, 54:7, 54:11, 54:20, 55:11, 57:11, 64:19, 76:7, 86:8, 103:12, 106:2, 108:3, 113:3, 113:13, 113:18, 115:10, 117:9, 119:17, 120:15, 122:19, 123:5, 123:8, 125:15, 126:2, 126:12, 129:7, 132:9, 136:7, 138:9, 140:5, 145:16, 145:19, 146:7, 147:2, 147:5, 150:20, 153:9, 153:15, 153:18, 156:20, 157:7, 158:17, 172:16, 173:1, 174:17, 175:1, 179:11, 179:15, 181:18, 183:17, 186:8, 186:12, 188:2, 189:9 watt ^[1] - 55:4 ways ^[1] - 184:9 weather ^[1] - 125:8 Wednesday ^[1] - 86:15 week ^[12] - 55:6, 57:8, 108:12, 115:19, 120:20, 121:1, 121:20, 122:12, 125:3, 135:6, 136:17 welcome ^[1] - 152:13 whatsoever ^[1] - 165:20 Whereof ^[1] - 191:7 WHITE ^[9] - 182:5, 182:9, 182:13, 183:1, 184:13, 185:8, 185:16, 186:18, 187:1 White ^[1] - 182:5 whole ^[9] - 48:11, 50:19, 99:19, 155:3, 161:9, 161:17, 162:8, 172:5, 176:8 wholehearted ^[1] - 77:1 Wi ^[1] - 121:16 Wi-Fi ^[1] - 121:16 wife ^[1] - 117:15 William ^[1] - 6:6 willing ^[1] - 177:11 willingness ^[1] - 152:1 WILSON ^[1] - 76:18 Wilson ^[1] - 76:18 window ^[2] - 29:1,</p>	<p>72:19 windows ^[1] - 93:8 wine ^[10] - 42:15, 161:11, 161:14, 162:2, 167:3, 171:1, 171:2, 171:9, 179:3, 180:19 wipe ^[1] - 124:6 wise ^[2] - 173:18, 174:7 wisely ^[1] - 166:9 wish ^[2] - 78:10, 120:10 withdrawn ^[1] - 42:8 Witness ^[1] - 191:7 wonder ^[2] - 43:7, 163:5 wondered ^[1] - 141:14 wondering ^[2] - 11:17, 153:1 Worcester ^[3] - 110:16, 111:4, 111:5 works ^[2] - 106:7, 180:12 Works ^[1] - 127:17 world ^[1] - 92:8 Worst ^[1] - 66:3 would've ^[2] - 39:11, 185:3 written ^[4] - 55:2, 97:11, 173:12, 181:3 wrote ^[1] - 119:17 www.reportersinc.com ^[1] - 1:18</p>
U		W		
<p>ultimate ^[1] - 97:13 uncap ^[1] - 174:4 uncapped ^[7] - 159:1, 168:18, 172:7, 173:19, 174:10, 175:3, 177:5 under ^[15] - 21:3, 37:4, 48:16, 50:11, 80:12, 84:15, 85:9, 138:15, 141:20, 169:7, 170:5, 178:20, 181:7, 182:18, 183:14 UNDER ^[1] - 191:15 underground ^[1] - 129:16 underneath ^[1] - 30:6 understandably ^[2] - 167:19, 168:9 understood ^[4] - 41:2, 148:10, 168:3, 168:5 uneasy ^[1] - 82:20 unfortunately ^[2] - 44:9, 154:4 unhappy ^[1] - 184:18 uniform ^[1] - 143:9 Union ^[4] - 188:14, 188:16, 188:20, 189:2 unique ^[2] - 183:17, 186:1</p>	V	<p>Wagamama ^[6] - 166:19, 167:4, 178:17, 179:2, 180:3, 180:4 Wagamore ^[1] - 159:14 wait ^[2] - 6:20, 125:8 walk ^[1] - 30:5 walked ^[1] - 30:8 wall ^[4] - 74:2, 75:4, 116:19, 132:17 walls ^[2] - 69:10, 74:1 wants ^[2] - 62:11, 180:9 warm ^[1] - 125:9 warrant ^[1] - 67:9 warranted ^[1] - 36:13 Warren ^[2] - 111:8, 111:9 Washington ^[2] - 123:18, 139:9 water ^[3] - 50:14, 50:15 Watertown ^[1] - 184:17 Watson ^[6] - 1:9, 10:3, 35:10, 57:8, 58:3, 76:6 WATSON ^[70] - 3:2, 4:5, 4:10, 4:15, 5:15, 10:7, 32:13, 35:16, 42:1, 43:9, 43:14,</p>		
<p>vacancies ^[1] - 88:10 vacant ^[3] - 60:6, 88:10, 89:4 vacating ^[1] - 71:1 value ^[4] - 155:12, 161:10, 161:16, 180:18 vamoose ^[1] - 57:4 vendor ^[4] - 19:18, 20:17, 21:14, 33:7 vendors ^[3] - 33:11, 183:19, 186:13 venture ^[1] - 66:1 venue ^[1] - 67:1 verbal ^[1] - 176:15 verbally ^[2] - 48:14, 175:17 verify ^[1] - 31:18 versa ^[1] - 97:16</p>				<p style="text-align: center;">Y</p> <p>year ^[19] - 9:10, 9:15, 10:1, 10:18, 17:18, 22:7, 24:18, 28:18, 43:10, 43:13, 54:2, 89:6, 95:9, 131:7, 131:8, 158:2, 158:10, 184:6, 186:14 year's ^[1] - 43:11 years ^[25] - 24:13, 46:19, 50:9, 51:6, 51:7, 51:9, 51:10, 51:12, 54:1, 60:7, 63:5, 64:2, 66:6, 73:20, 91:4, 92:13, 95:8, 110:13, 130:14, 135:2, 154:6, 158:5, 160:1, 166:8, 170:13 York ^[2] - 89:16, 93:1 young ^[1] - 162:4 yourself ^[4] - 105:5, 130:4, 149:20, 175:9</p>

Z

ZAM [3] - 109:1,
109:6, 111:9
zAM [1] - 109:5
Zam [1] - 109:5
zero [2] - 10:15,
164:12
zone [2] - 70:10, 70:11