

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
El Agave Tex Mex Rest, LLC)	
t/a Villa Tuscana)	
Applicant for a New)	Case No. 16-PRO-00010
Retailer's Class CR License)	License No. ABRA-100312
)	Order No. 2016-326
at premises)	
1723 Columbia Road, N.W.)	
Washington, D.C. 20009)	
)	

El Agave Tex Mex Rest, LLC, t/a Villa Tuscana (Applicant)

William Simpson, Commissioner, Advisory Neighborhood Commission (ANC) 1C

Denis James, President, Kalorama Citizens Association (KCA)

Ellen Jaffe and Nancy Shia, on behalf of A Group of Five or More Individuals (Nineteen Individuals)

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF PROTESTS**

The Application filed by El Agave Tex Mex Rest, LLC, t/a Villa Tuscana (Applicant), for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on February 29, 2016, and a Protest Status Hearing on March 16, 2016, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 1C, KCA, and the Group of Five or More Individuals have entered into a Settlement Agreement (Agreement), dated April 6, 2016, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Commissioner William Simpson, on behalf of ANC 1C; Denis James, on behalf of KCA; and the members of the Group of Five or More Individuals; are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 1C, KCA, and the Group of Five or More Individuals of this Application.

Accordingly, it is this 18th day of May, 2016, **ORDERED** that:

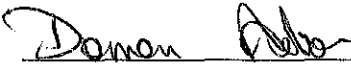
1. The Application filed by El Agave Tex Mex Rest, LLC, t/a Villa Tuscana, for a new Retailer's Class CR License, located at 1723 Columbia Road, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 1C, KCA, and the Group of Five or More Individuals in this matter are hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modification:

Section 13 (Modification) – This Section shall be modified to read as follows:
“This agreement can be modified only by the ABC Board, or by mutual agreement of all of the parties with the approval of the ABC Board, or as otherwise required by District law.”

The parties have agreed to this modification.

4. Copies of this Order shall be sent to the Applicant, ANC 1C, KCA, and Ellen Jaffe and Nancy Shia, on behalf of the Group of Five or More Individuals.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson

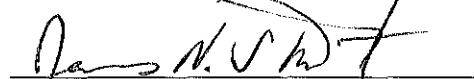
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

**SETTLEMENT AGREEMENT CONCERNING ISSUANCE OF LICENSE
FOR SALE OF ALCOHOLIC BEVERAGES**

THIS AGREEMENT, made and entered into this 6th day of April, 2016 by and between El Agave Tex Mex Rest LLC, trading as Villa Tuscana (the "Applicant"), Advisory Neighborhood Commission 1C ("ANC1C"), the Kalorama Citizens Association ("KCA"), and Nancy Shia, Ellen Jaffe, David Dorn, Margaret Devoe, Genie Wright, Dorothy Jackson, Vinson Nash, Phyllis Bennis, Elise Pierre, Robert Spalter-Roth, Henry Leland, Gay Glading, Edwin Hansen, Olivier Lamy, Daniel Commins, Jeffrey Wilkes, Stephen McKeivitt, Gabrielle Fisher, and Andrew Bickford (the "Residents"), witnesses:

Whereas Applicant has filed an application with the District of Columbia Alcoholic Beverage Control Board (the "Board") for the issuance of a class CR license for the premises to be known as Villa Tuscana located at 1723 Columbia Road NW, Washington, DC.

Whereas ANC1C, KCA, and the Residents (together, the "Protestants") have filed before the Board protests opposing the issuance of this license.

Whereas in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching settlement agreements, the parties hereto desire to enter into a settlement agreement whereby (1) Applicant will agree to adopt certain measures to address the Protestants' concerns and to include this agreement as a formal condition of its application, and (2) Protestants will agree to the issuance of the license and withdrawal of their protests *provided* that this agreement is incorporated into the Board's order issuing the license, which order is thereby conditioned upon compliance with this agreement.

Now therefore, in consideration of the mutual covenants and undertakings memorialized herein, the Parties agree as follows:

1. Operation. At all times, Applicant shall operate as a bona-fide restaurant with the primary purpose of food preparation and consumption. The kitchen shall be open and operational with cooked food menu items available on both the first and second floor of the establishment up until at least 30 minutes before closing each night.

2. Hours of Operation.

(a) Inside:

Sunday:	10:00 am until 12:30 am.
Monday through Thursday:	11:00 am until 12:30 am.
Friday:	11:00 am until 2:00 am.
Saturday:	10:00 am until 2:00 am.

5. Storage. The space on the third floor of the establishment shall be used for storage only. No furniture shall be kept there except for shelves to hold supplies. Patrons of the establishment shall not be permitted to enter this space. The door on the second floor of the establishment that leads up the stairs to the third floor of the establishment shall remain locked during the establishment's hours of operation except when an employee is in the act of retrieving items from storage or placing items into storage. The basement of the building shall not be part of the establishment.
6. Fire Escape / Rear. Patrons shall not be permitted to go onto the fire escape except in the case of emergency. Employees shall not be permitted to go onto the fire escape except in the case of emergency, to move supplies between the floors of the establishment, or to make repairs to the exterior of the establishment. Any such movement of supplies or repairs shall take place only during daylight hours. The fire escape shall not be used to bus food, drinks, or dishes between the floors of the establishment. Smoking or taking breaks on the fire escape or elsewhere in the rear of the establishment are prohibited.
7. Noise. Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations, including, but not limited to, the DC Noise Control Act of 1977 (DC Law 2-53) and 20 DCMR Chapters 27 and 28, as amended. Applicant agrees to prevent emissions of sound, capable of being heard outside the premises, by any amplification device or other device or source of sound or noise. There shall be no music played in the sidewalk cafe. Applicant agrees not to place in the sidewalk cafe any loudspeaker, tape player, CD player, or other similar device, or to place any inside speaker in such a way that it projects sound into the sidewalk cafe. The exterior doors and windows of the establishment (front and rear) shall be kept closed at all times, except that the exterior doors are permitted to be open when people are in the act of entering or exiting the establishment. The exterior doors will never be propped or tied open except while deliveries are being made to the restaurant.
8. Trash/Recycling/Rodents. Applicant shall maintain regular trash garbage removal service, regularly remove trash from the trash and dumpster areas, and see that the trash and dumpster area remain clean. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster. Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population. Applicant agrees to segregate bottles, cans, and cardboard from trash, and recycle them in accordance with DC law, and agrees not to dispose of recycling and trash in outside dumpsters or recycling containers between the hours of 11:00 pm and 8:00 am.
9. Exterior, Including Public Space. Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. Applicant agrees not to place or cause to be placed any fliers, handbills, or other similar advertisements in the public space, specifically on lampposts, street signs, or any vehicle parked in the public space. Applicant shall make every reasonable effort to prevent or

(b) Sidewalk Cafe:

Sunday: 10:00 am until 11:00 pm.
Monday through Thursday: 11:00 am until 11:00 pm.
Friday: 11:00 am until 12:00 am (midnight).
Saturday: 10:00 am until 12:00 am (midnight).

Applicant will amend its application to the Board to request morning hours of 10:00 am on Saturdays and Sundays.

(c) Last call will be announced 40 minutes before closing and all sales of alcohol will end 30 minutes before closing, each night of operation.

3. Seating. Inside capacity will not exceed 99. Sidewalk cafe capacity will not exceed 24.


4. Entertainment. Applicant agrees that entertainment will be limited to the following:

- (a) Applicant is permitted to have DJ or karaoke entertainment at special events up to 1 time per month. For the purposes of this agreement, a special event is an event that is booked at least 3 business days in advance, has defined hours for which it shall run, is not the everyday business of the establishment, but rather is an event such as a birthday party, wedding anniversary, retirement party, etc. Such special events shall not be open to the general public, and shall only be open to the guests of the individual or group that scheduled the special event.
- (b) Any such DJ or karaoke entertainment will take place only on the second floor of the restaurant. Applicant will maintain the furniture (tables, chairs, booths, stools, etc.) in their normal places during any such DJ or karaoke entertainment.
- (c) Applicant will manage all instances of DJ or karaoke entertainment, and will not turn over control of any part of the restaurant to event or entertainment promoters.
- (d) Any such DJ or karaoke entertainment will end at least one hour prior to the inside closing hours specified in Section 2(a).
- (e) Applicant shall maintain a continuous written log, in notebook form, for each special event demonstrating the type of special event, the date when the special event was arranged, the date when the special event occurred, the hours during which the special event ran, whether DJ or karaoke entertainment was provided, and the name and contact information of the individual or group that scheduled the special event. Applicant agrees to make this log available to any ABRA investigator or MPD officer upon request.
- (f) There will be no dancing at the restaurant.
- (g) There will be no live bands at the restaurant.
- (h) There will be no cover charges at the restaurant.

disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to cause patrons to leave those areas at closing.

10. Bar/Pub Crawls. Applicant agrees not to promote or participate in bar or pub "crawls", "tours", or similar events.
11. Consideration. Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage employees leaving the establishment to keep conversation and noise down from 11:00 pm to 8:00 am.
12. Regulations. In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.
13. Modification. This agreement can be modified only by the ABC Board, or by mutual agreement of all of the parties with the approval of the ABC Board.
14. Availability of Settlement Agreement. Applicant agrees to keep a copy of this Agreement available at the establishment at all times and to familiarize all employees with its conditions

El Agave Tex Mex Rest LLC



Name: Jose David LaRies
Title: *OWNER*
OWNER

04/04/16

Date

Advisory Neighborhood Commission 1C

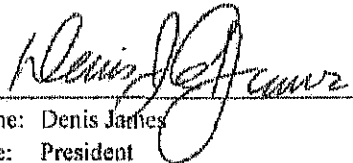


Name: William Simpson
Title: Member, ABC & Public Safety Committee

04/06/16

Date

Kalorama Citizens Association



Name: Denis James
Title: President

4.12.2016

Date

Gay Glading

Name: Gay Glading

4/6/16

Date

[Signature]

Name: Edwin Hansen

5/7/16

Date

GR Hansen

Name: Olivier Lamy

4/4/16

Date

DCay

Name: Daniel Commins

4/17/2016

Date

[Signature]

Name: Jeffrey Wilkes

4/4/16

Date

[Signature]

Name: Stephen McKevitt

Date

Gabrielle Fisher

Name: Gabrielle Fisher

4/5/16

Date

[Signature]

Name: Andrew Bickford

5 May 16

Date

Nancy Shiao
Name: Nancy Shiao

4/4/16
Date

Ellen Jaffe
Name: Ellen Jaffe

4/4/16
Date

David Dorn
Name: David Dorn

4/5/16
Date

Margaret Devoe
Name: Margaret Devoe

4/5/16
Date

Genie Wright
Name: Genie Wright

5/5/16
Date

Dorothy Jackson
Name: Dorothy Jackson

4/6/16
Date

Vinson Nash
Name: Vinson Nash

4/5/16
Date

Phyllis Bennis
Name: Phyllis Bennis

4/5/16
Date

Elise Pierre
Name: Elise Pierre

5/5/16
Date

Robert Spaller-Roth
Name: Robert Spaller-Roth

5/5/16
Date

Henry Leland
Name: Henry Leland

4/6/2017
Date

ACUERDO DE AVENIMIENTO CONCERNIENTE A LA EMISION DE LICENSIA PARA LA VENTA DE BEBIDAS ALCOHOLICAS

ESTE ACUERDO, iniciado, entro en vigor este día 6 de Abril, 2016 por y entre El Agave Tex Mex Rest LLC, comerciando como Villa Tuscana (el "Solicitante"), Advisory Neighborhood Commission IC (" ANCIC "), la Kalorama Citizens Association ("KCA"), y Nancy Shia, Ellen Jaffe, David Dorn, Margaret Devoe, Genie Wright, Dorothy Jackson, Vinson Nash, Phyllis Bennis, Elise Pierre, Robert Spalter-Roth, Henry Leland, Gay Glading, Edwin Hansen, Olivier Lamy, Daniel Commins, Jeffrey Wilkes, Stephen McKeivitt, Gabrielle Fisher, y Andrew (los Residentes), testigos:

Considerando que Solicitante ha archivado una solicitud a la Junta Directiva de Control de bebidas alcohólicas (la Junta Directiva) del Distrito de Columbia para la emisión de una licencia de categoría CR para el establecimiento comercial también conocido como Villa Tuscana ubicado en 1723 Columbia Road NW, Washington, DC.

Considerando que ANCIC, KCA, y los Residentes (colectivamente, los "Protestantes") han presentado ante la Junta Directiva, quejas en oposición a la emisión de esta licencia,

Considerando que en reconocimiento a la política de la Junta directiva de animar a las partes a resolver sus diferencias en un procedimiento de protesta a lograr un acta de conciliación, las partes a la presente desean entrar en un acuerdo de avenimiento a través del cual (1) Solicitante tendrá que concordar a adoptar ciertas medidas a abordar las preocupaciones de los protestantes e incluir este acuerdo como una condición oficial de su solicitud, y (2) Los Protestantes concordaran a la expedición de la licencia y de retirar sus protestas, siempre y cuando este acuerdo sea incorporado en la orden de la Junta Directiva y sea emitida la licencia cual orden de esta petición tras cumplimiento de este acuerdo.

Por lo tanto ahora se acuerda, en consideración a los mutuos acuerdos y promesas que se conmemoran aquí dentro, las Partes acuerdan a cumplir lo siguiente

1. Funcionamiento. Todo el tiempo, Solicitante tendrá como un autentico restaurante con el propósito primario de el consumo y preparación de comida. La cocina tendrá que estar abierta y en funcionamiento con comida cocinada de los platillos del menu disponibles tanto en el primer y segundo piso del establecimiento por lo mínimo 30 minutos cada noche antes de la hora de cierre.
2. Hóras de Negocio.

(a) Adentro:

Domingo:	10:00 am hasta 12:30 am.
Lunes a Jueves:	11:00 am hasta 12:30 am.
Viernes:	11:00 am hasta 2:00 am.
Sábado:	10:00 am hasta 2:00 am.

JDL

(b) Café con Terraza:

- Domingo: 10:00 am hasta 11:00 pm.
- Lunes a Jueves: 11:00 am hasta 11:00 pm.
- Viernes: 11:00 am hasta 12:00 am (medianoche).
- Sábado: 10:00 am hasta 12:00 am (medianoche).

Solicitante modificará su solicitud a la Junta para solicitar horas de la mañana de las 10:00 horas del sábado y domingo.

(e) Última llamada se anunciará 40 minutos antes de la hora de cierre y toda las ventas de alcohol tendrá que terminar 30 minutos antes de la hora de cierre cada noche de negocio.

3. Asientos. La capacidad del restaurante no excederá de 99. La capacidad de la acera del restaurante no superará los 24.

4. Entretenimiento. Solicitante concuerda que el entretenimiento será limitado a lo siguiente:

- (a) Solicitante le he permitido a tener DJ o entretenimiento de karaoke en eventos especiales hasta una vez por mes. Con el objetivo de este acuerdo, un evento especial, es un evento que ha sido reservado por lo menos tres días hábiles por adelantado, tendrá horas definidas por la cual deberá ser ejecutada, no será parte del establecimiento todos los días, pero será más bien eventos como una celebración de cumpleaños, aniversario de boda, fiesta de jubilación, etc. de manera que no estarán abiertos al público en general, y tendrán que estar abiertos solamente a invitados de el individuo o grupo que está programado para el evento especial.
- (b) Cualquier entretenimiento de DJ o Karaoke tendrá que tomar lugar en el segundo piso del establecimiento. Solicitante tendrá que mantener los muebles (mesas, sillas, cabinas, taburetes, etc.) en su lugar normal durante cualquier entretenimiento de DJ o karaoke.
- (c) Solicitante tendrá que administrar cada vez que sostenga un evento de DJ o karaoke, y no entregará a nadie ninguna parte del establecimiento, del evento o entretenimiento a ningún promotor(es).
- (d) Cualquier entretenimiento de DJ o karaoke tendrá que terminar una hora antes del cierre de la hora de adentro como están especificadas en la sección 2 (a).
- (e) Solicitante tendrá que mantener un registro continuo por escrito, en forma de un cuaderno, para cada evento especial, demostrando la clase de eventos especiales, la fecha cuando el evento especial fue dispuesto, las horas durante tomo lugar el evento especial, si o no fue proveído un DJ o karaoke y el nombre e información de datos del individuo o grupo que planifico el evento especial. Solicitante concuerda a hacer disponible este registro al ser solicitada por cualquier investigador de ABRA u Oficial del MPD.
- (f) No habrá baile en el establecimiento.
- (g) No habrá banda en vivo en el establecimiento.
- (h) No habrá ningún cargo por entrar al establecimiento

JDL

5. Almacenamiento. El espacio en la tercera piso del establecimiento, deberá ser usado sólo para almacenamiento. No se puede almacenar muebles allí excepto para los estantes para guardar materiales. Los clientes del establecimiento no podrán entrar en este espacio. La puerta en el segundo piso del establecimiento que lleva a las escaleras del tercer piso del establecimiento permanecerá cerrada durante las horas de operación, excepto cuando un empleado está en el acto de la recuperación de los artículos o la colocación de artículos en el almacenamiento. El sótano del edificio no será parte del establecimiento.
6. Salida de Incendios / Parte Trasera. No se permitirá a los clientes ir a la escalera de incendio, excepto en el caso de emergencia. No se permitirá a los empleados ir a la escalera de incendio, excepto en el caso de emergencia, para mover los suministros entre los pisos del establecimiento, o para hacer reparaciones en el exterior del establecimiento. Cualquier movimiento de los suministros o reparaciones solo pueden tener lugar durante las horas diurnas. La escalera de incendios no se utilizará para transportar las comidas, las bebidas o platos entre los pisos del establecimiento. Está prohibido fumar o tomar descansos en la escalera de incendios o en otro lugar en la parte trasera del establecimiento.
7. Ruido. Solicitante admite a familiarizarse con y cumplir con las provisiones del control de ruido de las leyes y regulaciones del Distrito de Columbia, incluyendo, pero no limitado al Acta de Control de Ruido de 1977 (DC Law 2-53) y 20 DCMR capítulo 27 y 28 en su forma enmendada. Solicitante concuerda a prevenir la emisión de sonido capaz de escucharse a las afueras del establecimiento, por cualquier aparato de amplificación u otra fuente de sonido o ruido. No se podrá tocar música en el Cafe con Terraza. Solicitante concuerda a no colocar en el Cafe con Terraza ningún altoparlante, toca cintas, reproductor de CD, o cualquier otro aparato similar o colocar cualquier altoparlante de adentro de manera a que proyecta el sonido hasta el Cafe con Terraza. Las puertas exteriores y ventanas del establecimiento (delanteras y traseras) se mantendrán cerradas en todo momento, excepto cuando las puertas exteriores están autorizadas a abrir cuando la gente entre o salga del establecimiento. Las puertas exteriores nunca serán apoyadas o atadas abiertas excepto mientras que las entregas se hacen al restaurante.
8. Basura/Reciclaje/Roedores. Solicitante deberá mantener un servicio regular de extracción de basura desperdicios, asegurar regularmente de remover los desperdicios y mantener el area limpia de basura en el area del contenedor de basura. Solicitante deberá de depositar desperdicios o basura solamente en un contenedor de basura a prueba de roedores, y deberá de atender que la cubierta sea apropiada y que permanezca totalmente cerrada con excepción de cuando la basura o desperdicios se estén agregando o removiendo. Solicitante tendrá que proveer la eliminación apropiada de grasa o aceites grasosos del establecimiento y no depositara grasa o aceite grasosos en el contenedor de basura. Solicitante hará todo esfuerzo razonable de eliminar toda fuente de comida para los roedores y eliminar la población de las ratas. Solicitante concuerda a segregar botellas, latas, carton y reciclarlo de acuerdo a las leyes de DC y concuerda de no desechar reciclaje y basura en los contenedores de basura de afuera entre las horas de las 11:00 pm y 8:00 am.
9. Exterior, Incluyendo el Espacio Publico. Solicitante deberá de ayudar al mantenimiento del callejón y el espacio enfrente del establecimiento de por menos 18 pulgadas hacia afuera del bordillo cuando sea

J.D.2

necesario para mantenerlo libre de basura y remover la nieve y hielo de la acera y cumplir con todas las leyes y regulaciones aplicables de DC a este respecto. Solicitante concuerda a no colocar o provocar a colocar cualquier volante, folleto o cualquier anuncio similar en un espacio publico, específicamente en postes de alumbrado, carteles indicadores o cualquier vehículo estacionado en un espacio publico. Solicitante deberá de hacer cualquier esfuerzo razonable a prevenir holgazanear o cualquier otra fuente de ruido o disturbio en las áreas de enfrente o en la parte trasera del establecimiento durante el horario comercial y a la hora de cierre, y motivar a los clientes a marcharse de esas zonas a la hora de cierre.

10. Bar/Llevar de Bar (Pub Crawls). Solicitante concuerda a no promocionar o contribuir en Bar "crawls", "tours" o eventos similares.
11. Consideración. Solicitante animara a empleados y clientes tener consideración a los residentes de la vecindad a todas horas. Solicitante animara a los empleados a mantener las conversaciones y el ruido a un mínimo de 11:00 pm a 8:00 am.
12. Regulación. Además de cuanto antecede, Solicitante tendrá que operar en cumplimiento a todas las leyes y regulaciones.
13. Modificación. Este acuerdo solamente podrá ser modificado por la Junta directiva del ABC o por un acuerdo mutuo por todas las partes con la aprobación de la Junta directiva del ABC.
14. Disponibilidad Acuerdo de Avenimiento. Solicitante concuerda a mantener una copia disponible de este Acuerdo en el negocio a toda horas y a familiarizar a todos los empleados de estos requisitos.

J. P. L.