GRAY PLANT MOOTY

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April 5, 2011

VIA EMAIL

Ms. Kathy Lantry, President
Members of the City Council
City of St. Paul
15 Kellogg Boulevard West
St. Paul, MN 55102

RE: Grand American Restaurant Co.
Application for Liquor/Outdoor Service Area (patio)
License #: 1999000235
788 Grand Avenue

Dear President Lantry and Council Members:

This letter is submitted on behalf of Grand American Restaurant Co. (Grand American) in connection with the public hearing to be held on April 6, 2011 on the application ("Application") of Grand American for a liquor/outdoor service area license ("Patio License") for the Wild Onion Restaurant ("Wild Onion"), located at 788 Grand Avenue.

Attached to this letter please find the following materials, which we submit for inclusion in the record of this matter.

1. Affidavit of Pat Mancini.
2. Affidavit of Joseph Schaefer.
3. Affidavit of T. Jay Salmen.
4. Proposed Stipulated Facts and Stipulated Record.

The proposed Stipulated Facts and Stipulated Record were submitted to the City Attorney on January 3, 2011. They were not agreed to and are submitted at this time as Grand America's statement of the facts and record up to January 3, 2011. The documents identified in the Stipulated Record have been provided to the City Clerk, along with the originals of the three affidavits.

Grand American requests that:

1. Council Member David Thune be disqualified from participating in the public hearing on Wednesday, April 6, 2011, or acting on the Application for a Patio License.
2. That the remaining Council Members consider the Application on its merits without regard to the opposition of Council Member Thune to the Application.
3. That the City Council adopt the resolution of approval of the Application which was before the City Council on July 21, 2010.
4. That approval of the Application be subject to all of the conditions recommended by the Summit Hill Association, and that the approval be for a one year period, as recommended by the Summit Hill Association, with the Wild Onion to return for reissuance of the Patio License following a one year trial period.

In their consideration of the merits of the Application, we ask the council to consider the following:

1. The Wild Onion is an existing business which holds several on-sale liquor licenses and a sidewalk café license, all of which are in good standing with the City. The Wild Onion has an existing patio area where it serves food. The patio is open to patrons at all hours the restaurant is open. The only question before the City Council is whether the Wild Onion will be licensed to serve liquor on its existing patio. If the license is approved, the patio will close to patrons no later than 9:30 p.m. each evening.

2. The criteria for approval of the Application for a Patio License are:
   a. That a good faith effort was made to fulfill all petition requirements;
   b. That the attempt shows a generally favorable disposition from the surrounding community towards the proposed license activity; and
   c. That the District Council representing the area supports the request for a patio license.

3. No question has been raised that Grand American did not make a good faith effort to comply with the petition requirement, and the Summit Hill Association has approved the application subject to a number of conditions, all of which Grand American has agreed to.

4. Therefore, the only question before the Council is whether the efforts to fulfill the petition requirements "show a generally favorable disposition from the surrounding community towards the proposed license licensed activity."

5. Twenty-six of sixty residential properties located within 300 feet of the Wild Onion responded to Grand American's efforts to obtain written consents. Of the 26 responses, 22 provided written consent to the proposed Patio License. This is an 85% approval rate among those who responded. In addition to property owners, 100 percent of the 27 residential tenants located within 300 feet of the Wild Onion signed written consents to the proposed Patio License, as did 6 businesses and institutions in the surrounding area and the Grand Avenue Business Association.

6. The Department of Safety and Inspections has found that the Application meets all of the requirements for a Patio License and has recommended approval of the License, subject to conditions. Grand American has agreed to those conditions.

7. The Summit Hill Association, after taking and considering testimony from all sides, has recommended approval of the Patio License, subject to conditions. Grand American has agreed to those conditions.

8. The Legislative Hearing Officer, after taking and considering the testimony from all sides, has recommended approval of the license, subject to conditions. Grand American has agreed to those conditions.

9. The City Code does not require approval of the local Council Member. The Code sets forth a detailed process and provides for review by an impartial Hearing Officer to ensure that licensing decisions are not made by one individual. A defacto policy by the City Council granting the local Council Member total discretion over such matters frustrates the language and intent of the Ordinance, and can result in arbitrary and capricious decisions not based on the Code and the facts.

10. The City Code does not require 100% approval of the neighbors closest to the business. The Code requires a "generally favorable disposition from the surrounding community" to the license. The surrounding community includes tenants, businesses and local institutions, all of whom have supported the Patio License100%.

11. The City Council has never denied a patio service license.

12. Denial of a patio service license must be based on more than failure to obtain the consent of the closest neighbors and the opposition of the ward council member.

13. Denial of the Patio License must be based on some finding that allowing liquor service on the existing patio, while reducing the hours that the patio will be open, is harmful to the public health, safety and welfare. Nothing in the record would support such a finding.

14. The request before the City Council is for a one year trial period. The Wild Onion agreed with the Summit Hill Association that if a patio service license were issued for the 2010 season, Grand American would reapply for a permanent license the following year. Grand American is honoring this commitment by agreeing that if a license is issued for the 2011 season, Grand American will apply for reissuance of the license next winter so that any issues that arise over the course of the summer can be identified and addressed. Grand American recognizes that it is at risk of not having the license reissued in future years if issues arise during the summer of 2011 that would warrant a decision not to reissue.

We have included our legal analysis in prior correspondence to the Council and will not repeat it here. We acknowledge that the Council has wide discretion with respect to liquor license matters, but point out that the Council's discretion is not total and that the Council cannot act arbitrarily or capriciously. Denial of an Application which meets the requirements spelled out in the City Code and which would have no impact on the public health, safety and welfare would be arbitrary and capricious.

Grand American has worked hard in recent years with the Summit Hill Association to address issues that have been raised by its immediate neighbors in the past, and has successfully done so. Adding patio service is important for the continued success of this restaurant. Grand American will continue to pursue all avenues to obtain the Patio License, including an appeal if there is a denial of this Application, as well as the submission of new applications in future years. This is not an issue which will go away. The best course of action is to approve the Patio License for a one year trial period so that all players, including Grand American, the Grand Avenue Business Association, the Summit Hill

Association, Council Member Thune and the immediately adjacent neighbors can determine whether there is a reason why patio service should not be allowed in the future.

Very truly yours,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By_____
Peter K. Beck

PKB:klz

cc: Shari Moore, City Clerk (w/original letter and affidavits)
Rachel Tierney, Assistant City Attorney
Bob Kessler, Director, Dept. of Safety and Inspections
Nhia Vang, Deputy Legislative Hearing Officer
Timothy J. Pramas, President, Summit Hill Association
Jeff Roy, Executive Director, Summit Hill Association
David J. Regan, Executive Director, Grand Avenue Business Association
T. Jay Salmen
Joseph Schaefer

GP:2959011 v5

STATE OF MINNESOTA)

)SS

COUNTY OF RAMSEY)

AFFIDAVIT

I, Pat Mancini, being duly sworn hereby state as follows:

1. My name is Pat Mancini.
2. I live at 6330 Barclay Avenue in Inver Grove Heights, Minnesota.
3. This affidavit is submitted in connection with the application ("Application") of Grand American Restaurant Co. (Grand American) for a Liquor/Outdoor Service Area License (Patio License) at the Wild Onion Restaurant (Wild Onion).
4. I am the owner of Mancini's Charhouse, located at 531 West 7th Street in the City of St. Paul.
5. St. Paul City Council Member David Thune is a regular customer of my business.
6. I have discussed the Application of Grand American for a Patio License for the Wild Onion Restaurant on Grand Avenue with Council Member Thune on several occasions.
7. On February 14, 2011 Council Member Thune and his wife had dinner in my restaurant. Council Member Thune brought up the Application for a Patio License at the Wild Onion and stated to me that he wanted to meet with Jay Salmen, one of the owners of the Wild Onion, to reach a resolution of the Wild Onion Patio License issue.
8. I asked Council Member Thune specifically if he wanted Jay Salmen to call him and he said that he did, because he said thought he could work out the situation with the Patio License. Council Member Thune asked me to give Mr. Salmen his cell phone number.
9. Following my conversation with Council Member Thune on February 14, 2011, I spoke with Jay Salmen, one of the owners of the Wild Onion, and told him to call Council Member Thune on his cell phone.
10. In the weeks following those conversations I had several discussions with Council Member Thune regarding the Wild Onion and Council Member Thune stated that he was attempting to set up a meeting to resolve the license issues.

IN WITNESS WHEREOF, I have signed this Affidavit this 4 day of April, 2011.

Patrick Mancini

Sworn to and subscribed before me this 4 day of April, 2011.

Jane Marie Mancini
Notary Public

SEAL

JANE MARIE MANCINI
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2012

STATE OF MINNESOTA)

)SS

COUNTY OF RAMSEY)

AFFIDAVIT

I, Joseph Schaefer, being duly sworn hereby state as follows:

1. My name is Joseph Schaefer.
2. I live at 700 Hidden Creek Trail in Mendota Heights, Minnesota.
3. This affidavit is submitted in connection with the application ("Application") of Grand American Restaurant Co. (Grand American) for a Liquor/Outdoor Service Area License (Patio License) at the Wild Onion Restaurant (Wild Onion).
4. I am one of the owners of Grand American, which owns the Wild Onion Restaurant located at 788 Grand Avenue in the City of St. Paul.
5. I have been primarily responsible for the Application for a Patio License at the Wild Onion. I prepared and submitted the Application, coordinated the efforts to obtain written consents from the property owners within 300 feet of the Wild Onion, and worked with City Department of Safety and Inspections staff to ensure that all Application materials were property submitted. I attended several meetings of the Summit Hill Association regarding the Application and worked with the Summit Hill Association to seek and obtain their approval for the proposed Patio License.
6. In the course of preparing the Application we sent three separate letters, dated October 14, 2008, January 21, 2009 and August 1, 2009, to 70 residential and commercial property owners located within the 300 feet of the Wild Onion. In addition, we went door to door to the properties located within 300 feet of the premises seeking written consents, on several occasions.
7. Of the 60 residential property owners identified by City staff as falling within 300 feet of the Wild Onion, we found that: 1) correct addresses could not be found for the owners of two of the properties, possibly due to foreclosures; 2) 26 of the remaining 58 residential property owners responded; 3) of the 26 responses, 21 provided written consent to our proposed patio license prior to the April 15, 2010 Legislative Hearing, and one additional consent was submitted after the hearing; and 4) only 4 property owners objected to the proposed Patio License.
8. In addition to property owners, we contacted 27 residential tenants within 300 feet and 6 businesses and institutions in the surrounding area. All 27 tenants and all of the businesses and institutions who responded supported the proposed Patio License.
9. The Summit Hill Association Board of Directors approved the request for a Patio License subject to a number of conditions, all of which we have agreed to.
10. I have been advised by the City Department of Safety and Inspections that the City Council has never denied an application for a patio service license.

IN WITNESS WHEREOF, I have signed this Affidavit this 5th day of April, 2011.

Joseph Schaefer

Sworn to and subscribed before me this 5th day of April, 2011.

Lucinda L. Haas

Notary Public

SEAL

LUCINDA L. HAAS
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

STATE OF MINNESOTA)

)SS

COUNTY OF RAMSEY)

AFFIDAVIT

I, T. Jay Salmen, being duly sworn hereby state as follows:

1. My name is T. Jay Salmen.
2. I live at 404 Mississippi River Boulevard South in St. Paul.
3. This affidavit is submitted in connection with the application ("Application") of Grand American Restaurant Co. (Grand American) for a Liquor/Outdoor Service Area License (Patio License) at the Wild Onion Restaurant (Wild Onion).
4. I am one of the owners of Grand American, which owns the Wild Onion Restaurant located at 788 Grand Avenue.
5. I have been involved throughout the process of the Application for a Patio License for the Wild Onion Restaurant.
6. Prior to commencing the Application process, I made numerous attempts to contact Council Member David Thune, the city council member for Ward 2, the ward in which the Wild Onion is located, to discuss with him the proposal for a Patio License for the Wild Onion and to identify any issues or concerns he would have with the Wild Onion having a Patio License. My efforts to contact Council Member Thune included numerous phone and voicemail messages and, on one occasion, I went to Council Member Thune's office in an effort to meet with him. I did not have an opportunity to meet with Council Member Thune and did not have any direct contact from Council Member Thune until February 25, 2011.
7. In an effort to get some feedback from Council Member Thune I sought assistance from Ron Maddox, a friend of mine who I knew to be a friend of Council Member Thune. Mr. Maddox advised me that he had discussed the proposed Application with Council Member Thune and that Council Member Thune had advised him that if the Wild Onion got approval of the proposed Patio License from the Summit Hill Association, that Council Member Thune would support it.
8. With this feedback in hand, we submitted the Application for the Patio License on January 25, 2010 and began the process of meeting with and working with the Summit Hill Association to see if we could get their support. On March 11, 2010, the Summit Hill Association Board approved our request for a Patio License, subject to conditions, all of which we have agreed to.
9. On April 15, 2010, a legislative hearing was held on our Application before Deputy Legislative Hearing Officer Nhia Vang. The hearing officer issued a License Hearing Memorandum recommending approval of our Patio License on May 21, 2010, and the Application was scheduled for City Council approval on June 2, 2010.

10. Neither I, nor any representative of the Wild Onion, was provided any notice of the status of our Application from the date of the April 15, 2010 hearing until we received a letter from the City attorney on July 7, 2010, advising us that the Application was "pending".
11. Throughout May and June of 2010, I made numerous efforts to contact Council Member Thune to determine the status of our Application. I received no responses.
12. I ceased my efforts to reach Council Member Thune in July 2010, after engaging legal counsel in an effort to determine why no action was being taken on our Application for a Patio License.
13. On July 1, 2010 my legal counsel submitted a letter to the city attorney, along with a Data Practices Act request, in an effort to determine the status of our Application and the reasons for the delay in approval of the Application by the City Council.
14. On July 7, 2010 we were advised by the city attorney that the Application was "pending" and that Council Member Thune intended to schedule the matter for discussion at the July 21, 2010 City Council meeting. This was 3 months after the Legislative Hearing Officer issued her report to the City Council.
15. We subsequently received a response from the City Clerk's office to our Data Practices Act request. The City Clerk indicated to us that Council Member Thune had submitted no materials in response to the Data Practices Act request.
16. On February 25, 2011, I had a telephone call from Council Member Thune. This was the first contact I had from Council Member Thune regarding our Application. Council Member Thune and I talked for 20 to 30 minutes.
17. Council Member Thune indicated several times during this conversation that he believed the Wild Onion is entitled to a Patio License just as the other restaurant businesses on Grand Avenue have patio licenses, but that he was hesitant to support the Application because of the potential impact that neighborhood opponents could have on his 2011 re-election campaign. He mentioned specifically that he would need every vote he could get and wanted to work out a solution acceptable to the dissenting neighbors so as to not hurt his chances to re-election. I told him that I would agree to meet with him and the neighbors and would prefer to resolve the matter without litigation.
18. I subsequently had 4 or 5 additional conversations with Council Member Thune. The last conversation I had with him was in mid-March. Council Member Thune asked if the Wild Onion would agree to a continuance of the April 6, 2011 City Council hearing so that he could try to work out a solution with the neighbors. I specifically asked if he was requesting this continuance and would tell the city attorney that he supported the continuance. He indicated that he would. I agreed to a continuance if meetings could be set up immediately so that there was no further delay and a license could be issued for the 2011 season.
19. I have had no further contacts with Council Member Thune since that discussion. I was subsequently advised that Council Member Thune would not support the continuance or attempt to work out a resolution.

20. It is my opinion that:

- Council Member Thune intentionally delayed our application for a patio service license through most of the summer of 2010 in order to render the application moot.
- Council Member Thune violated the Minnesota Data Practices Act by not responding to our Data Practices Act request, which was made in an effort to determine the reasons for the delay in City Council consideration of our Application.
- Council Member Thune is opposed to the Application for a Patio License for the Wild Onion for political reasons unrelated to the merits of the Application.
- Council Member Thune should be disqualified from sitting in judgment on our Application for a Patio License because his actions in delaying consideration of the license show that he has prejudged the matter, because his opposition to the Application is unrelated to the merits of the Application, and because of his recent actions in requesting that I contact him, returning my call when I did contact him, making subsequent unsolicited calls to me, and attempting to get me to further delay consideration of the matter by the City Council.

IN WITNESS WHEREOF, I have signed this Affidavit this 4th day of April, 2011.

T. Jay Salmen

Sworn to and subscribed before me this 4th day of April, 2011.

Karen L. Zimmerman
Notary Public

SEAL

KAREN LIANE ZIMMERMAN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan 31, 2015

GP:2959039 v1

Application of Grand American Restaurant Company,
d/b/a The Wild Onion, for a Liquor Outdoor Service Area – Patio License

Stipulated Facts

1. Grand American Restaurant Company d/b/a The Wild Onion (hereinafter "Licensee"), located at 788 Grand Avenue in St. Paul, MN holds the following licenses issued by the City of St. Paul: Sidewalk Café, Restaurant D, Entertainment B, Liquor On Sale – Sunday, Liquor On Sale – 181-290 Seats, Gambling Location, Liquor On Sale – 2:00 a.m. Closing, Restaurant 5 – 151 and over, and Cigarette/Tobacco.
2. Licensee was first licensed on May 15, 1997.
3. Currently, Licensee has the following license conditions:
    1. The management of The Wild Onion shall provide security in the parking lots Tuesday through Saturday at bar closing to ensure that the patrons leave the premises and the parking lots without causing a disturbance in the surrounding neighborhoods. Patrons shall be advised of the necessity of leaving in an orderly manner and shall not be permitted to loiter outside the bar or in the parking lots.
    2. The sidewalk cafe is an extension of the restaurant operation onto a part of the public sidewalk which immediately adjoins the licensed premises.
    3. No sidewalk cafe shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of thirty-six (36) inches must be maintained on the public sidewalk at all times.
    4. No tables, chairs or any other furnishings, except plant tubs, shall be placed in the area used for the sidewalk cafe during any period when the sidewalk cafe is not open and being operated. While such cafe is in operation, all tables and chairs shall be kept in a clean, sanitary condition.
    5. The use of a portion of the public sidewalk as a sidewalk cafe shall not be an exclusive use. All public improvements, including but not limited to trees, light poles, traffic signals, pull boxes or manholes, or any public-initiated maintenance procedures, shall take precedence over said use of the public sidewalk at all times.
    6. It shall be the duty of the licensed food establishment to maintain each plant tub at all times in a safe condition at its proper location and to inspect each such tub periodically in order that it may be properly maintained. Trees or plants and their tubs shall at all times be kept in a neat, clean and presentable condition. No advertising matter or sign or writing of any kind shall be displayed upon any tree or plant or its tub.
    7. No liquor sales and/or service is allowed on a public sidewalk without prior approval and additional licensing from the Department of Safety and Inspections (DSI).
    8. No outdoor food and/or beverage preparation is allowed on a public sidewalk without prior approval and additional licensing from DSI.

4. Conditions 2 through 8 above relate to Licensee's sidewalk café license. Licensee has not, to date, installed the approved sidewalk café.
5. Licensee has an existing patio area located immediately east and south of its building. The patio area includes 16 tables and seating for approximately 64 patrons.
6. The Wild Onion is on the south side of Grand Avenue, facing north. To the east and west of the Wild Onion are commercial properties. To the south and across an alley is residential property. Licensee has installed an 8 foot high solid wood cedar fence along the alley which, together with the parking lot, acts as a buffer between the patio and the alley.
7. Licensee originally applied for a Liquor Outdoor Service Area – Patio License (hereinafter "Patio License") on April 10, 2009 for the 2009 summer season (record document No. 1). At that time, the area district council, the Summit Hill Association, voted not to support the request and suggested that Licensee make some improvements and come back in a year and try again.
8. Licensee reopened its application for a Patio License by letters dated January 25, 2010 and June 28, 2010 (record documents No. 2 and 3).
9. Licensee included in its letter reopening the application commitments that:
    - The patio would close at dark, no later than 9:30 pm.
    - After closing the patio, Licensee would not serve on the patio nor allow seating or activity on the patio.
    - The patio would have no speakers or TVs and would use low wattage lighting hanging under the awning.
10. St. Paul Legislative Code §409.06(g) requires that an applicant for a Patio License submit with their application a statement in writing with the signatures of as many of the owners with private residences, dwellings and apartment houses located within 300 feet of such premises as he or she can obtain to the effect that they have no objection to the granting of the license sought at the location proposed (record document no. 4).
11. City staff determined that the petition submitted by Licensee in support of the proposed license was signed by thirty-three (33) percent of property owners within three hundred (300) feet of the licensed premises (20 of a possible 60 signatures).
12. Licensee sent three separate letters, dated October 14, 2008, January 21, 2009 and August 1, 2009 (record documents No. 5, 6 and 7), to 70 residential and commercial property owners located within the 300 feet of its premises. In addition, Licensee went door to door to the properties located within 300 feet of the premises seeking written consents, on several occasions (record document no. 3).
13. Of the 60 residential property owners identified by City staff as falling within Code §409.06(g), Licensee reported that: 1) correct addresses could not be found for the owners of two of the properties, possibly due to foreclosures; 2) 26 of the remaining 58 residential property owners responded; 3) of the 26 responses, 21 provided written consent to Licensee's proposed Patio License prior to the April 15, 2010 Legislative Hearing, and one additional consent was submitted after the hearing; and 4) only 4 property owners objected to the proposed Patio License.
14. In addition to property owners, Licensee contacted 27 residential tenants living within 300 feet of the premises. Of the 27 residential tenants contacted, all 27 signed a written consent to the proposed Patio License.

15. In addition to residential property owners, Licensee contacted each of the businesses and institutions in the surrounding area. Two of the businesses contacted did not respond. The remaining businesses all supported Licensee's proposed Patio License.

16. Licensee's application was reopened by the City Department of Safety and Inspections and a Class N Notification was sent out to the Summit Hill Association and property owners within 300 feet of the Licensee's premises. The notification recommended the following additional license conditions:

- The outdoor patio seating area shall close at 9:30 p.m. each night of the week, and there shall be no customers, patrons, and/or employees allowed on the patio for any reason after this time.
- There shall be no music (recorded or live) on the patio.
- The licensee shall implement sufficient security measures to insure that alcohol is not consumed in the parking lot or public right-of-way.
- There shall be no bar (temporary or permanent) outside on the patio unless prior written approval, and the proper license(s) are first obtained from DSI.

(Record documents No. 8 and 9.)

17. On February 22, 2010, the Grand Ave Business Association (GABA) submitted a letter to the Summit Hill Association supporting Licensee's application for a Patio License, noting:

Since 2009, we have collectively noted additional positive changes in the establishment.

- Solid/effective management and best practices
- Adherence to neighborhood requests
- Decreased noise levels
- Participation in a GABA's collective and collaborative Bar/Restaurant RESPECT 21 campaign which was a direct by-product of these original talks.
- Currently is one of the only establishments that does not have this ability and puts them at a competitive disadvantage.

It is for these reasons we ask that you support the request.

(Record document no. 10.)

18. The Summit Hill Association (SHA) considered Licensee's application for a Patio License on March 3 and March 11, 2010, and submitted a letter dated March 22, 2010 to the City indicating SHA's support for the application, subject to the following conditions:

- That the patio liquor license would be on a trial basis and will expire and sunset on Sunday, November 14, 2010 at 9:30 p.m.
- That all service (both food and drink) must end by 9:30 p.m. and the patio must be cleared of all patrons by 9:30 p.m.
- That the Wild Onion will provide food & drink service on the patio only at tables and only to those seated at the tables. No stand-up service for any patron on the patio, and no loitering allowed by patrons on the patio for those not seated.
- That no music shall be played on the patio (live or recorded).
- That no liquor service be provided to any patron who does not order food.

- That the Wild Onion participate in a task force to be created by SHA to include neighborhood resident representatives, to address and minimize problems associated with late-night patron behavior.
- That Wild Onion assign full-time security to continuously monitor all Wild Onion patron parking lots from 9:30 p.m. to ½ hour after 2 a.m. closing, five days a week, Tuesday night through Saturday evening/early Sunday morning.

(Record document no. 11.)

19. Licensee's proposed activity is supported by the area district council, the Summit Hill Association, subject to the following license conditions:
    9. The outdoor patio seating area shall closed at 9:30 p.m. each night of the week, and there shall be no customers, patrons and/or employees (other than management and security personnel patrolling the area) allowed on the patio for any reason after this time. These restrictions do not include the smoking area.
    10. There shall be no music (recorded or live) on the patio.
    11. The licensee shall implement sufficient security measures to insure that alcohol is not consumed in the parking lot or public right-or-way. The Wild Onion will assign full-time security to continuously monitor all Wild Onion patron parking lots from 9:30 p.m. to ½ hour after 2 AM closing, five (5) days per week, Tuesday night through Saturday evening/early Sunday morning.
    12. There shall be no bar (temporary or permanent) outside on the patio unless prior written approval and the proper license(s) are first obtained from DSI.
    13. The Wild Onion will provide food and drink service on the patio only to patrons seated at tables. No stand-up service will be provided for any patron and no loitering is allowed by patrons who are not seated.
    14. No liquor service will be provided to patrons who do not order food.
    15. The Wild Onion will participate in a task force to be created by the Summit Hill Association (SHA) to address and minimize problems associated with late night patron behavior.
    16. The patio liquor license will expire on November 14, 2010. The licensee will be required to reapply one (1) time for the patio liquor permit to continue liquor service in 2011 and future seasons. In order to get the license reissued, the licensee will be required to go through the regular license application process for patio liquor licenses with the exception of the requirement for submission of a petition. Standard notification procedure will be followed for neighborhood review. After review, a recommendation on the application will be made by SHA to the city council. The Saint Paul City Council has the final authority to reissue the license.
20. Licensee has agreed to the Summit Hill Association's proposed license conditions, with the exception of condition number 16. In lieu of Summit Hill Association's proposed license condition number 16, Licensee has agreed to reapply for its patio service license, as provided in proposed condition number 16, if the patio service license is approved and Licensee is able to provide one full year of patio service pursuant to that license.

21. Upon receipt of the completed license application, the Department of Safety and Inspections Licensing Division (DSI) sent notice of the license application by mail to all owners and occupants who own property or reside within three hundred fifty (350) feet of the establishment, and all community organizations that were registered with DSI to be notified of any application. After the notice was sent, the City received objections to the license application. These objections triggered a public hearing on the license application before the Legislative Hearing Officer. St. Paul Leg. Code § 409.06. The hearing was held on April 15, 2010 (record document no. 12).
22. At the Legislative Hearing, DSI recommended approval of the license subject to the conditions recommended by DSI staff and the conditions proposed by the Summit Hill Association (record document no. 13).
23. Tim Pramas, President of the Summit Hill Association, Jeff Roy, Executive Director of the Summit Hill Association, Chad Skally, President of the Grand Avenue Business Association, and David Regan, Executive Director of the Grand Avenue Business Association testified in favor of the license application.
24. Bob DeBellis and Rich Laffin testified against the license application.
25. Betsy Turner, Bob Debellis, Fay DeBellis, Judy Miller, Merritt Clapp-Smith, Bill Pesek, Tom Richardson and Don McCall submitted letters against the license application. These eight individuals represent 6, or 10%, of the residential properties located within 300 feet.
26. A petition in opposition to the license application was also submitted. That petition was signed by representatives of 41 properties. 22 of the signatures are from property owners within three hundred feet of licensee, however 4 of those property owners also signed the petition in favor of the licensed activity. Therefore, representatives of 17 properties within three hundred (300) feet of the establishment signed a petition in opposition to the proposed license, which is 28.3% of the residential property owners within 300 feet.
27. The records of the Department of Safety and Inspection contain the following information regarding past license history:
    - May 17, 2002, representatives from licensing meet with manager of Wild Onion to discuss complaints about noise from patrons leaving bar. No adverse action taken.
    - October 19, 2002, CN 02-231-985 states 25-75 patrons disruptive after closing. No adverse action taken.
    - April 2, 2003, adverse action for selling cigarettes to a minor. $200 fine.
    - March 10, 2004, adverse action for selling cigarettes to a minor. $400 fine.
    - December 16, 2005, Deputy Director in charge of Licensing sends letter to Wild Onion regarding noise complaints. No adverse action taken.
    - November 10, 2006, CN 06-231-523 states neighbors are complaining about patron noise. No adverse action taken.
    - August 17, 2007, representatives from licensing meet with licensee regarding neighborhood nuisance complaints. No adverse action taken.
    - June 11, 2008, CN 08-108-837 indicates violation of license condition requiring security in the parking lot at closing time (license condition # 1). Adverse action taken based on this police report. A hearing was held before an Administrative Law Judge. City Council upheld the violation and ordered a $500 fine.

- July 21, 2008, investigation into selling alcoholic beverages to a minor. No adverse action taken.
- April 22, 2009, representatives from licensing meet with licensee regarding newspaper article with photograph of underage patrons drinking inside the establishment. No adverse action taken.

28. There are no records of any other license history between April 27, 2009 and April 15, 2010.
29. On May 21, 2010, Deputy Legislative Hearing Officer Nhia Vang, who conducted the April 15, 2010 legislative hearing, released minutes of the hearing (record document No. 14) and submitted a License Hearing Memorandum to Council Member Dave Thune, Ward 2 (record document No. 15).
30. Licensee was not provided a copy of the minutes of the hearing or the Memorandum to Council Member Thune until July 2010, and then only in response to a request by Applicant under the State Data Practices Act (record document No. 16).
31. Deputy Legislative Hearing Officer Vang's Memorandum recommended approval of Licensee's Patio License application, subject to the conditions recommended by DSI staff and the Summit Hill Association (record document No. 15).
32. On May 17, 2010, Licensee submitted a signed statement agreeing to all 16 conditions recommended by Deputy Legislative Hearing Officer Vang, DSI staff and the Summit Hill Association (record document No. 17).
33. Following submission of the License Hearing Memorandum to Council Member Thune, Licensee's application for a Patio License was scheduled to be considered by the St. Paul City Council on June 2, 2010 (record document No. 18).
34. From May 17, 2010 to July 7, 2010, Licensee received no notification of the status of its application for a Patio License. Licensee sent a letter to the DSI on June 9, 2010, but received no response (record document No. 19).
35. On July 1, 2010, counsel for Licensee sent a letter to the City Attorney inquiring as to the status of Licensee's Patio License application (record document No. 20).
36. On July 7, 2010, the City Attorney responded that the City Council would consider the Application on July 21, 2010 (record document No. 21).
37. Licensee submitted a letter dated July 19, 2010 to the City Council noting that a delay in acting on the License would be an effective denial (record document No. 22).
38. The St. Paul City Council, at its meeting of July 21, 2010, had before it a proposed Resolution approving Licensee's Application for a Patio License (record document No. 23). On motion of Council Member Thune, the Resolution was referred to the City Attorney for preparation of a Resolution of denial. There was no discussion by any other Council Member.
39. On July 27, 2010, the President of the Summit Hill Association (SHA) sent an email to the City Council in support of Licensee's Application for a Patio License, stating that SHA has "received generally favorable feedback from the neighborhood" on SHA's recommendation (record document No. 24).
40. On July 27, 2010, the St. Paul Area Chamber of Commerce sent a letter to the City Council in support of Licensee's Application for a Patio License, stating that Licensee should be given the same opportunity to capitalize on patio season as other establishments along Grand Ave. (record document No. 25).

41. On July 28, 2010, counsel for Licensee sent a letter to the City Council addressing the proposal to deny the License and pointing out that to do so would be treating the Licensee differently than other Applicants (record document No. 26). The information on other applicants was obtained in an email from DSI staff dated July 27, 2010 (record document No. 27).
42. On July 28, 2010, the St. Paul City Council, on motion of Council Member Thune, adopted an amended Resolution referring Licensee's application for a Patio License to the City Attorney for adverse action (record document No. 28). There was no discussion of the Resolution by any other Council Member.
43. The amended resolution finds that Licensee, "failed to show that the results of the attempts to satisfy the signature requirements showed a generally favorable disposition toward the licensed activity" (record document No. 28).
44. On July 29, 2010, Licensee received a Notice of Intent to Deny License (record document No. 29).
45. Licensee agrees to and admits the facts set forth in this recital of Stipulated Facts and has elected to submit the matter to the City Council pursuant to St. Paul Legislation Code Section 310.05(c) for a determination of whether to grant or deny the Patio License.
46. Pursuant to Section 310.05(c), the City Council shall consider only the facts set forth in this recital of Stipulated Facts and the documents identified in the attached Stipulated Record in making its determination and shall not consider any additional factual testimony or documents.

Attachment(s)

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Application of Grand American Restaurant Company,
d/b/a The Wild Onion, for a Liquor Outdoor Service Area – Patio License

Stipulated Record

1. **February 2, 2010** Receipt for License Application.

2. **January 25, 2010** Letter from Grand American Restaurant Co. to Kris Schweinler, Department of Safety and Inspections for the City of St. Paul regarding re-opening application for a Patio Liquor License.

3. **January 28, 2010** Additional letter from Grand American Restaurant Corp. to Kris Schweinler, Department of Safety and Inspections for the City of St. Paul regarding Results of Petition from neighbors.

4. **St. Paul Legislative Code Section 409.06.**

5. **October 14, 2008** Letter to Neighbors from the Wild Onion (Joe and Linda Schaefer and Jay Salmen) regarding Patio Liquor License.

6. **January 21, 2009** Additional Letter to Neighbors from the Wild Onion regarding Petition for Liquor License.

7. **August 1, 2009** Letter to Neighbors from the Wild Onion regarding Petition for Patio Liquor License.

8. **February 3, 2010** Letter from Christine Rozek, DSI Deputy Director, to Joseph Schaefer regarding license application.

9. **February 3, 2010** Email from Jeffrey Fischbach to Grand American Restaurant Co. regarding Class N Notification.

10. **February 22, 2010** Letter to Jeff Roy, Executive Director, Summit Hill Association from David J. Regan, Executive Director Grand Avenue Business Association regarding support of Patio Liquor License for Wild Onion.

11. **March 22, 2010** Letter to Marcia Moermond, Legislative Hearing Officer from Timothy Pramas, President, Summit Hill Association regarding approval of Patio Liquor License subject to conditions.

12. **March 25, 2010** Notice of Legislative Hearing from the City of St. Paul to Joseph Schaefer.

13. **April 15, 2010** License Application Summary.

14. **April 15, 2010** License Hearing Minutes.

15. **May 21, 2010** License hearing Memorandum from Nhia Vang, Deputy Legislative Hearing Office to Councilmember Dave Thune, Ward 2, regarding Grand American Restaurant Company, doing business as The Wild Onion.

16. **July 1, 2010** Letter from Peter Beck to Gerald Hendrickson, City Attorney (Interim), City of St. Paul regarding Request for Data and Internal Communications.

17. **May 17, 2010** Signed agreement to list of Conditions.

18. **June 12, 2010** Green Sheet.

19. **June 9, 2010** Copy of letter to Robert Kessler, Director of License and Inspection from Wild Onion regarding application for a patio liquor license.

20. **July 1, 2010** Letter from Peter Beck to Gerald Hendrickson, City Attorney (Interim), City of St. Paul regarding Inquiry into status of Patio Liquor License Application.

21. **July 7, 2010** Letter from Gerald Hendrickson, City Attorney, City of St. Paul to Peter Beck regarding discussion on matter scheduled for July 21, 2010.

22. **July 19, 2010** Letter from Peter Beck to Kathy Lantry, President, and Members of the City Council, City of St. Paul regarding Request for approval of Application for Patio Liquor License.

23. **July 21, 2010** Proposed Resolution of Approval.

24. **July 27, 2010** Email from Tim Pramus to P. Beck regarding email to St. Paul City Council.

25. **July 28, 2010** Email from Linda Schaefer to Peter Beck regarding St. Paul Area Chamber of Commerce letter in support of Application.

26. **July 28, 2010** Letter from Peter Beck to Kathy Lantry, President and Members of the City Council, City of St. Paul regarding Request that Council adopt the resolution of approval of Application for Patio Service License.

27. **July 27, 2010** Email from Christine Rozek, city of St. Paul, to Peter Beck regarding patio/sidewalk cafes with liquor/wine/beer licenses (not in downtown area).

28. **July 28, 2010** Amended Resolution.

29. **July 29, 2010** Notice of Intent to Deny License from City of St. Paul to Joseph Schaefer, The Wild Onion.