

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY COUNCIL OF THE
CITY OF BLOOMINGTON, MINNESOTA

In re:

The Application of DRT Wine & Spirits, LLC
d/b/a Total Wine & More, for an off-sale
liquor license in the City of Bloomington
(the "Applicant").

**CITY'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Perry Wilson, on September 10, 2014, at the City Council Chambers of the Bloomington Civic Plaza, 1800 West Old Shakopee Road, Bloomington, MN. The parties submitted Post-Hearing Proposed Findings of Fact and Conclusions of Law on September 19, 2014, and the record closed on that date.

Sandra Henkels Johnson, Bloomington City Attorney and Marianna Kaul, Assistant Bloomington City Attorney, 1800 West Old Shakopee Road, Bloomington, MN appeared on behalf of the Licensing Authority and Mark Jacobson and Debra Page, Lindquist & Vennum LLP, 4200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402 appeared on behalf of the Applicant.

STATEMENT OF ISSUE

Whether or not the Applicant, based on past activities or criminal record, poses a threat to the public interest or to the effective regulation and control of alcohol or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and activities in the manufacture, sale, distribution or possession for sale or distribution of alcohol or the carrying on of the business and financial arrangements incidental to the manufacture, sale, distribution, or possession for sale or distribution of alcohol.

FINDINGS OF FACT

A. Background of Total Wine & More:

23. Total Wine & More is the operating name under which DRT Wine & Spirits, LLC proposes to operate the store in Bloomington at 4260 West 78th Street if a license is issued. The proposed facility consists of 17,310 square feet of net rentable area and includes a large party or education room, a wine sampling bar with full sized wine glasses and a walk-in humidor. (Ex. 01.001-.012)
24. Total Wine & More began with one store in Delaware in 1991. David Trone started in the liquor business in approximately 1985 with the Case Beer & Soda and Beer World stores in Pennsylvania. (Ex. 20.0015)
25. There are now 105 Total Wine & More stores operating in 16 states as of July 2014. (Stipulated Fact A.3)
26. An average Total Wine & More store carries about 8000 different wines, about 3000 different spirits, and about 2500 different beers. Total Wine & More reported sales of over \$1.5 billion in 2013, with wine accounting for approximately 64% of the sales volume. (Stipulated Fact A.4 and Total Wine & More Company Overview 2014)
27. Total Wine & More obtains accounting, marketing, and management services from RSSI, which owns Total Wine operating companies in Delaware, Virginia, North Carolina, and South Carolina. (Stipulated Fact A.5)
28. RSSI is owned by David and Robert Trone and five trusts. RSSI does not own an interest in the applicant, DRT Wine & Spirits, LLC, but is the lead borrower in a \$250 million credit facility with five banks, as to which the Applicant is a co-borrower and a co-guarantor of the facility, along with all the other entities operating stores under the Total Wine name. Lenders deposit funds into one account and RSSI divides the funds among the Total Wine entities. (Stipulated Fact A.6)

B. Application under consideration:

7. Applicant DRT Wine & Spirits, LLC is a limited liability company registered under Minnesota law and has two members, David Trone and Robert Trone. Both David Trone and Robert Trone list RSSI as their employer on the license application. (Ex. 01.001-007)
8. DRT Wine & Spirits, LLC does not own any other liquor stores in Minnesota or elsewhere and has no pending license applications in Minnesota or other states. (Ex. 01.001-012 and Stipulated Fact B.2)

9. Other Total Wine & More stores are owned by entities whose members or shareholders are trusts, but there are no trusts with any membership or other interests in DRT Wine & Spirits, LLC. (Stipulated Fact B.3)
10. An application was filed in September 2013 by Minnesota Fine Wines & Spirits, LLC for a liquor license in the City of Bloomington to open a Total Wine & More store. The applicant withdrew that application, due in part to concerns raised by the City about the minor beneficiaries of trusts that have an ownership interest in Minnesota Fine Wines & Spirits, LLC. (Stipulated Fact B.4) That license also failed to list many of the prior violations of the Applicant, most significantly, the New Jersey \$1 million in sanctions and 4 license suspensions.
11. The second license application of DRT Wine & Spirits, LLC is complete. (Stipulated Fact B.5)
12. There are no past-due or delinquent taxes owing on the property where the Total Wine & More store is proposing to open. (Stipulated Fact B.6)
13. DRT Wine & Spirits, LLC has provided sufficient proof of all insurance coverage required for issuance of an off-sale liquor license. (Stipulated Fact B.7)
14. The store proposed by DRT Wine & Spirits, LLC is not located within 300 feet of a school or place of worship. (Stipulated Fact B.8)
15. No corporate officer of DRT Wine & Spirits, LLC, or proposed general manager, is under 21 years of age, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(2). (Stipulated Fact B.9)
16. No corporate officer of DRT Wine & Spirits, LLC, or proposed general manager, is a manufacturer, brewer, or wholesaler as defined in Bloomington Code § 13.01.01, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(3). (Stipulated Fact B.10)
17. No corporate officer of DRT Wine & Spirits, LLC, or proposed general manager, has been convicted within the last 5 years of any felony nor of any crime involving the manufacture, sale, distribution, or possession of alcohol, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(4). (Stipulated Fact B.11)
18. No corporate officer of DRT Wine & Spirits, LLC, or proposed general manager, has had a liquor license revoked within the past 5 years, and the grant of an off-

sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(5).(Stipulated Fact B.12)

19. No corporate officer of DRT Wine & Spirits, LLC, or proposed general manager, had an interest in any business that has had a liquor license revoked within the past 5 years, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(6). (Stipulated Fact B.13)
20. No corporate officer of DRT Wine & Spirits, LLC, or proposed general manager, has an interest in any other establishment in Bloomington that holds or is applying for an off-sale liquor license, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(7). (Stipulated Fact B.14)
21. No spouse of any corporate officer of DRT Wine & Spirits, LLC or the proposed general manager is ineligible for a liquor license in Bloomington, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(8). (Stipulated Fact B.15)
22. DRT Wine & Spirits, LLC, and its owners David Trone and Robert Trone, are real parties in interest in the off-sale liquor license application under consideration, and the grant of an off-sale liquor license to DRT Wine & Spirits, LLC is not barred by Bloomington Code § 13.46(9). (Stipulated Fact B. 16)

C. Total Wine's record in Minnesota:

29. Roseville, Burnsville and Woodbury are the only Minnesota cities to consider a license application for a Total Wine & More store. (Stipulated Fact C.1) Roseville, Burnsville and Woodbury have all approved the license applications for Total Wine & More stores. (Stipulated Fact C.2)
30. Existing local liquor retailers, and the Minnesota Licensed Beverage Association ("MLBA"), a trade association and lobbying organization for liquor retailers, have actively opposed license applications for Total Wine & More stores in Roseville, Burnsville, Woodbury, and Bloomington. (Stipulated Fact C.3)
31. On or about January 27, 2014, the Applicant held a private luncheon for 'a small group of local community leaders' at the proposed Bloomington licensed premises. (Attached invitation). If any liquor was served, the Applicant would have been required to hire a licensed caterer and provide the City with prior

notice of the event. Minn. Stat. §340A.404, subd. 12. If food was served a temporary food license application would have to be submitted under Bloomington City Code §14.450 (7). The license may be waived, if after City staff review the event was deemed a private, invitation only event. No notice of or application for a license for the event was provided to the City.

32. The Burnsville private tasting room reservation web page at <https://totalwine.eventready.com/eventrequest> lists the capacity of that room at 120 persons. The website lists the per person fee for private wine tastings in the room in a range from \$15 to \$30. It also references a Customer Loyalty program and Private Tasting Certificates for up to 20 people. MN Rule 7515.0740 L. prohibits any statement in an off-sale liquor advertisement offering a coupon, premium, prize or rebate as an inducement to purchase intoxicating liquor.
27. Attorneys for Bev Mo, a national competitor of Total Wine, also filed documents opposing Total Wine's Bloomington application, as did a local law firm, Binsfeld and Engebretson, P.A. (Stipulated Fact C.4)
28. The MLBA and a competing Roseville liquor retailer appealed the City of Roseville's grant of a liquor license for a Total Wine & More store to the Minnesota Court of Appeals. The Court of Appeals dismissed the appeal with prejudice, holding that the competing retailer and the MLBA did not have standing to bring the appeal because their only interest in the matter was in preventing competition. (Stipulated Fact C.5)
29. The decisions by the cities of Burnsville and Woodbury to grant liquor licenses for Total Wine & More stores were not appealed. (Stipulated Fact C.6)
30. The first Total Wine & More store in Minnesota opened in Roseville in March 2014. (Stipulated Fact C.7) The Burnsville and Woodbury Total Wine & More stores are both expected to open in the fall of 2014. (Stipulated Fact C.8)

D. Total Wine's record in Pennsylvania:

31. In 1989, Pennsylvania alcoholic beverage regulators filed five criminal complaints against David Trone for liquor law violations and later arrested him. The charges were ultimately dismissed. (Waypoint, Inc. Due Diligence Report Regarding David Trone (Stipulated Ex. 03.0026)

32. Case Beer & Soda, an RSSI affiliate, in 1989 had its license suspended 1 day and was fined \$5000.00 in Case 88-0883 for furnishing alcohol to a minor in the context of five prior violations in the preceding five years for illegal sales or record keeping violations in Cases 84-1854 (\$350.00), 84-3545 (\$750.00), 85-3012 (\$2000.00), 86-1958 (\$500.00) and 86-3330 and 87-0545 (consolidated \$1000.00 and 1 day suspension). (Stipulated Ex. 20.0164-.0178)
33. Case Beer & Soda in 1990 had a 1 day license suspension and \$1000 fine in Case 88-1538 and another 1 day suspension and \$2000.00 fine in Case 89-1648 for illegal Sunday sales. (Stipulated Ex. 20.0179-0184)
34. On December 31, 1992, the Pennsylvania Liquor Control Board ("PLCB") issued Case Beer & Soda a letter indicating that based upon its history of violations it would undergo further intense review and close scrutiny and following that the PLCB would determine whether or not the abuse of privilege by Case Beer & Soda would merit refusal of future renewal applications. (Stipulated Ex. 20.0203)
35. Also in 1988, JET Distributors, an RSSI affiliate, was fined \$1200 for purchasing liquor from an unlawful distributor and selling or delivering alcoholic beverages to licensees outside of permitted area and offered or gave inducements to purchase alcoholic beverages. Case 88-0129.
36. Between 1983 and 2006, David Trone's liquor operations in Pennsylvania were fined 25 times, totaling more than \$32,000, not including the 1992 monetary sanctions of \$40,000. Many of the violations involved providing inducements to purchase alcohol, record keeping violations, advertising violations, and purchasing liquor from an unlawful distributor. There are no Total Wine stores in Pennsylvania, although RSSI is incorporated there. (Letter of William Griffith, June 19, 2014, Total Wine and More: Liquor Law Violations by Jurisdiction, Tab 1, Pages 2-3)
37. In 1992, David Trone, Robert Trone and June Trone were arrested. David was charged with 23 counts, including 9 counts of tampering with public records, four counts of criminal solicitation, 4 counts of operating a corrupt organization, 2 counts of perjury and single counts of conspiracy, dealing in the proceeds of unlawful activity, deceptive business practices and obstructing the

administration of justice. The facts serving as a basis for the criminal charges included License Subterfuge whereby David Trone, by use of his consulting firm, RSSI, was able to illegally control and operate five liquor stores in violation of the state law limiting any one liquor licensee to one store.

(Stipulated Ex. 31.0001 -.0009)

38. The tampering with public records charges alleged Trone's submission of fraudulent liquor license applications in the names of 'straw licensees'. One store was owned by Paul Piho, a childhood friend of David Trone, another by his wife, a third by Thomas Esper a retired teacher who stated he knew little about the store or the liquor business, a fourth by Trone's sister, who lived out of the state, and another by Albert Vivio, the father of one of Trone's employees who stated he did not pay anything to own the store and had no duties there. (Stipulated Ex. 20.0015-.0046/ Ex. 18.0237 - .0269)
39. The criminal solicitation charges accused Trone of soliciting the 'straw licensees' to fraudulently place their names on the liquor license applications. The perjury counts refer to Trone's prior sworn statement that he "didn't run any Beer World anywhere". The criminal conspiracy charges alleged that Trone, along with his wife and brother and their 'straw licensees', conspired to withhold information relating to David Trone's pecuniary interest in the Beer World stores. (*Id.*)
40. The dealing in proceeds of illegal activity charges related to the movement of Beer World proceeds to Trone's RSSI with the intent to promote illegal activity. (*Id.*) The deceptive practices charges related to the sale of stale beer. (*Id.*) The RICO or corrupt organization charges describe the straw licenses and the income derived from those criminal acts as racketeering. (*Id.*)
41. In the case of *Callahan v. A.E.V., Inc.*, 182 F.3d 237, 268, (3rd Cir. 1999), which was a lawsuit filed by several competitors against David Trone, his stores and a large distributor alleging antitrust and civil Racketeering Influenced and Corrupt Organization violations, the Third Circuit affirmed the district court grant of summary judgment in favor of defendants on the RICO claims, but reversed summary judgment on the antitrust claims and remanded the case. The parties apparently settled the lawsuit. Chief Judge Becker summarized the antitrust violations, as follows:

“Trone, his employees, and the separately incorporated stores have contracted, combined and conspired to restrain trade in beer in Allegheny County, by confronting wholesalers as a group and using their buying power and the threats described above (poor product placement) to force the wholesalers to sell them beer at a price lower than that available to other retailers.” *Id.* at 240.

Judge Becker concluded that plaintiffs had “adduced sufficient evidence of fact of damage on their antitrust claims.” *Id.* at 250.

42. David Trone testified at the hearing that he fights all liquor license violations against him and he wins every case. He described both the Pennsylvania and New Jersey settlements as ‘wins’. He testified that he drafted the 1994 settlement agreement and himself set the terms of the agreement, which at paragraph 6, required him, upon the request of state authorities, to annually permit inspection of his personal tax returns and records associated with his personal bank accounts, the tax returns and bank accounts of RSSI, Beer World, Inc. and any other Pennsylvania entity or corporation of which he owned in excess of 50% of the outstanding common stock, as well as all contracts between David Trone or any entity or corporation acting on his behalf, and any person or entity licensed by the PLCB as a malt beverage distributor.(Stipulated Ex. 24.0017 / Ex. 31.0048)
43. The Pennsylvania 1994 settlement also included payment to the state of \$40,000, and execution of a consent decree imposing a number of conditions on the future operations of David Trone’s Beer World stores. The conditions function to divest David Trone’s interest in multiple liquor licenses, require that the relationship between Trone’s RSSI consulting firm and licensed liquor stores revert to a purely consulting role, and discourage the sale of stale beer to customers without notice of that fact. The settlement also required Trone to drop two lawsuits he had filed against the state. (Stipulated Ex. 31.0044-.0058)
44. The Applicant minimizes the severity of the Pennsylvania criminal charges and describes this case as consisting of “flawed and baseless criminal charges”, describing the attorney general as “disgraced” and “corrupt”. (Stipulated Ex. 31.0068-0073) In his testimony at this hearing David Trone characterized his Pennsylvania violations on the whole as “not earth shattering” and in general attributed his violation history to the use, by his competitors, of “the government to manipulate the system.” He further testified that he sought

revenge against the lead plaintiff in the *Callahan* case, using his CPA's to land him in jail.

45. Mr. Trone testified that in discussing his business enterprises' past violations, he was referring only to adjudicated violations and argued that he did not see why the Pennsylvania and other cases that were negotiated to eventual dismissal should be relevant in this case. He testified that he agreed to the terms of the Pennsylvania settlement because he would rather pay the state's expenses than pay his lawyers.

E. Total Wine's record in New Jersey:

46. There have been at least ten cases of liquor law violations in New Jersey involving the Applicant since 1991. (Stipulated Ex. 02.0958-.1460)
47. In four cases, Total Wine and More had paid \$1 million in monetary sanctions measured by the costs of New Jersey's investigation (\$250,000 per off-sale license) and entered a plea to negotiated charges of 'failure to maintain or produce true books' for the four separate off-sale licenses. (Stipulated Ex. 18.0205-.0212, 18.0213-.0220, 18.0221-.0228, 18.0229-.0236)
48. The conduct at issue was initially charged out as violations of the state's limitation on the number of licenses held by any one entity under N.J.S.A . Sec. 33:1-12.31, which states,

"On and after the effective date of this act no person, as the same is defined in R.S. 33:1-1, shall, except as hereinafter provided, acquire a beneficial interest in more than a total of two alcoholic beverage retail licenses..."
(Testimony of Sandra Johnson/ City's Ex. 19)
49. According to New Jersey Assistant Attorney General Wesley Geiselman, the evidence demonstrated that Total Wine & More made monetary disbursements to a holding company, RSSI, which controlled the operation of four stores, thus violating the limitation on the number of retail licenses held by a single entity. (Testimony of Sandra Johnson)
50. Four Consent Orders were issued on July 25, 2005, whereby Total Wine & More, entered a plea of "non vult", or no contest, to the negotiated charges of failure to produce books of account within seven business days of demand, agreed to implement a list of corrective actions, and to pay \$250,000 for each of the four licenses, over a period of years. Total Wine & More also agreed to the forfeiture

of all alcoholic beverages, cash and personalty seized from the four stores in connection with the investigation. (Stipulated Ex. 24.0025 - .0047)

51. In return for the plea and agreement, the Director of Alcoholic Beverage Control **suspended** each of the four licenses for 30 days – but the suspension was not required to be served so long as Total Wine & More complied with the Consent Order. The required 15 corrective actions included:
- a) separation of both ownership and operation of the Cherry Hill two stores from the EGH two stores;
 - b) all supplies and non-alcoholic beverages sold by the stores must be priced and invoiced at reasonable levels;
 - c) Cherry Hill, EGH and RSSI must re-arrange their business dealings to avoid shifting of profits among the entities and that any services provided by RSSI to Cherry Hill or EGH be at market rates and prices;
 - d) Cherry Hill and EGH must comply with all applicable New Jersey laws regarding the practice of “packing out”;
 - e) RSSI must register to do business in New Jersey;
 - f) RSSI must not provide unpaid personnel to Cherry Hill or EGH;
 - g) RSSI must not control the day-to-day operations of either Cherry Hill or EGH and each store must make its own purchases of wine, spirits or beer from wholesalers directly; and
 - h) RSSI must not guarantee the debt of either Cherry Hill or EGH. (*Id.*)

52. The other New Jersey cases are summarized as follows:

Case 05-31602, Cherry Hill Wine and Spirits, Inc., trading as Total Wine and More. Lic.#: 0409-44-001 Offense: Tailored charges. Offense date: March 26, 2005. Case closed with warning letter.

Case 98-21677, Cherry Hill Wine and Spirits, Inc., trading as Total Wine and More. Lic. #: 0409-44-001 Offenses: 1) E141, Employee list incomplete or not available; 2) APP1 No current license application – short/long; 3) PULA Sale to underage. Offense dates May 5, 1998. Case closed May 31, 2000. Licensee paid \$7500 fine in lieu of 7 day suspension.

Case 95-20582, Cherry Hill Wine and Spirits, Inc., trading as Total Wine and More. Lic. #: 0409-44-001 Offense: Sale to underage. Offense date: July 20,

1995. Case closed Jan. 8, 1997. Licensee paid \$10,000 fine in lieu of 7 day suspension.

Case 91-18763, Vineyard Liquors. Lic. #: 0409-44-001 Offenses: No federal tax stamp or indicia of payment and underage sale. Offense date: July 17, 1991. Case closed April 27, 1992. Licensee pay \$500 fine in lieu of 10 day suspension.

NOTE: License application 0722-44-046-008 lists a January 1, 1997, violation Docket # 06028-965, prosecuted by Division of ABC, licensee paid \$10,000 fine.ⁱ

And there are four pending cases from February 2014 in New Jersey for Illegal Sales Below Cost in **Case Nos. 13-35785, 23-35791, 13-35786, and 13-35831**. (Stipulated Ex. 18.0159-0204)

53. Again, the Applicant minimizes the severity of these cases, arguing that no serious violations occurred but that they negotiated a settlement simply to bring the matter to a conclusion. Trone stated that “those licensees were turning ‘seven figures’ each and the settlement was an acceptable cost”. (Testimony of David Trone)

F. Total Wine’s record in Florida:

54. The Applicant has been charged with twenty-four liquor law violations in Florida, including violations of the Three-tiered System. (Stipulated Ex. 02.680 – .0985)
55. In Complaint #2011041370, 8/26/2011, Tied House Evil, Total Wine received an Official Notice. (*Id.*)
56. In Complaint #2010039271, 7/15/2010, Total Wine was investigated for receiving beer directly from Pike Brewing without going through Florida distributor and a warning was issued against Total Wine. (*Id.*)
57. In Complaint #2013009489, 3/28/2013, the Florida Alcoholic Beverages and Tobacco enforcement division investigated allegations that Total Wine was stocking its Melbourne, Florida store from an out-of-state warehouse owned by Total Wine. The then manager of the store, Chris Berthelson, provided invoices confirming the out-of-state deliveries and told investigators that this was common to various Total Wine and More stores, especially when stocking new stores. Berthelson shortly thereafter left the employ of Total Wine and a new set of invoices were produced for Florida investigators. Investigators noted record-keeping violations, and questioned whether or not Total Wine paid the required excise taxes on the liquor shipped from out of state. The case was closed in May 2013 with the statement, “Due to improperly formatted delivery

invoices there is confusion as to who actually sold the product from out of state. This confusion is exacerbated by no matching reports from The Stacole Company (wholesaler); and no clear records of taxes being paid on the alcohol imported from Total Wine's out of state warehouse." (Stipulated Ex. 20.0234-.0240)

58. When asked why, with all of Total Wine's resources, the Melbourne Florida store did not have clear invoices or other documents identifying the source of that initial inventory and about Mr. Berthelson's statements, Trone would only respond that the Florida charges were "thrown in the garbage where they belonged."

G. Total Wine's record in Connecticut:

59. The Applicant has been found guilty of several violations in Connecticut. The details of several of these offenses are not available according to the Applicant's Waypoint Report.
60. The most serious was Case #2013-618 - A violation of § 30-68m, Retail Permittee; Sales below cost prohibited- was found against Total Wine and More based on evidence that it advertised and sold alcoholic beverages below cost in the month of May 2013. Sixteen items were offered for sale in Norwalk, CT below the state minimum. It was negotiated with Total Wine's "Offer in Compromise" to pay a \$500 fine in lieu of formal administrative hearing for incidents occurring from 12-26-2012 to 3-14-2013. This was accepted and imposed with Total Wine and More agreeing to corrective action. (Stipulated Ex. 18.0024 - .0042)

H. Total Wine's record in Texas:

61. In Case 2013-CI-03999, the Texas 150th Judicial District Court, a competitor, Gabriel 's Liquors, brought an injunctive action barring a Total Wine store in San Antonio, Texas from opening, alleging that Total Wine's operations violate state ownership limitations. Gabriel alleged that RSSI was the actual owner of all Total Wine stores and that it purchased all of its alcoholic beverages through RSSI and negotiated and implemented all new deal structures for new product through RSSI. (Stipulated Ex. 18.0305 -.0320)
62. The district court judge granted a temporary restraining order based upon its finding that plaintiff was likely to succeed on the merits in that despite Total Wines' appearance that it is independently owned, it is in fact owned,

controlled, funded and managed by RSSI and that this violates Texas Alcoholic Beverage Control provisions by (a) engaging in a subterfuge scheme that surrenders control of the employees, premises and business to a person other than the permit holder; (b) allowing a person to directly or indirectly hold an interest in more than five package store permits; (c) conducting business that directly or indirectly coordinates operations with another package store not wholly owned by the same person. (Stipulated Ex. 18.0321-.0326)

63. In Plaintiff Inez Cindy Gabriel's affidavit to the court she states the following:

Gabriel's Liquors has confirmed that all 85-plus (Total Wine) stores throughout the United States are required to purchase all of their alcoholic beverages through Retail Services and Systems, Inc. ("RSSI") at RSSI's corporate headquarters in Potomac, Maryland. These purchasing activities include, but are not limited to all: (1) bulk buying of alcoholic beverages; (2) negotiations and implementations of deal structures with new brands; and (3) presentations by new distributors and suppliers of new products.

In addition, Gabriel's Liquor has confirmed in discussions with representatives of key supplier sources such as Diageo, Brown-Forman, E&J Gallo Winery, Pernod Riccard, Bacardi and Remy Martin that Texas Total Wine stores are required to: (1) purchase all of their initial alcoholic beverages through RSSI; and (2) negotiate and implement all new deal structures for new products through RSSI. (Stipulated Ex. 19.0305-.0320)

64. The Texas, ABC found that the allegation #5 of the Gabriel protest was a valid issue, as follows: "RSSI is same ownership as Total Wine Spirits, Beer and More, Applicant and North Texas LLC. With the practice of sweeping accounts from each entity, profit and losses are being controlled by RSSI. Investment is being controlled by RSSI. The interest paid for RSSI Concentration Bank Account is transferred to Fine Wines and Spirits, LLC by journal entry as a percentage. Investments are in same bank account for RSSI. Repayment of San Antonio startup expenses are made from RSSI Concentration Bank Account and Bank Credit facility same as a deficit/negative daily balance. RSSI is a different entity than Fine Wine and Spirits LLC". (Stipulated Ex. 18.0330-.0388)
65. On August 1, 2013, Total Wine withdrew its liquor license application. In October 2013, a new application was filed with supplemental information detailing the relationship between RSSI and Total Wine. New protests to that license were lodged with the Texas ABC. Ultimately, after RSSI was added to the

ownership for the San Antonio Total Wine store, the Texas ABC found no License Subterfuge and the injunction expired in November 2013. (Stipulated Ex. 18.0327 - .0329)

66. In Texas Case No. 3277498 – Total Wine was found to have engaged in deceptive marketing practices. A warning issued 11/30/2012. (Stipulated Ex. 18.0330-.0388)
67. In Case Nos. 303194-303199 – Total Wine was found to have sold alcoholic beverages to a permittee on the delinquent list. A penalty of a 3 day suspension and \$900 civil penalty was recommended by the Texas ABC. Ultimately only a warning issued. (*Id.*)

I. Public Testimony:

68. Jay Nelson, the owner and operator of the Burnsville Haskell's Wine & Spirits store, testified that he is not afraid of competition, but that the same rules should apply to all licensees. He questioned Total Wine's acquisition of the Red Hawk Liquor store in Burnsville, without any assets or inventory changing hands and Total Wine's similar acquisition of a store in Roseville. It did not seem right to him that only Total Wine could compete for those licenses in cities where there is a limit on the number of off-sale liquor licenses granted.
69. Mr. Nelson also recounted that his store had been recently "crawling with employees of Total Wine" documenting Haskell's pricing structure of certain products. One man, who identified himself as a marketing manager for Total Wine, was asked by Nelson to stop taking notes of Haskell's prices and when leaving the store told Nelson, "I'm sorry". Nelson responded, "Pardon me". The Total Wine marketing manager then said, "I'm sorry we will put you out of business."
70. Nelson expressed concern that Total Wine was making a calculated effort to undercut the prices of the competition with intent to drive out all competition.
71. Nelson stated that he met with four of Burnsville's five council members and each one of them expressed concerns about Total Wine initiating litigation against the City should they deny Total Wine its license application.
72. Gelmar Bechara also testified that he recently purchased a liquor store. He alleged that he believed that a single violation would have prohibited him from

operating in Bloomington and that ten violations would have resulted in a certain denial.

73. David Hautman, the operator of Seven Eighths Liquor testified that he has been in the business since 1976. He expressed concern about Total Wine pricing product below cost on the most popular products; this does not allow other stores to cover their expenses. He stated that the Applicant knows that and plans to take up as much business as it can this company (Total Wine), is intending to drive out other businesses and will also litigate to change current liquor laws that do not accommodate Total Wine's business strategy.
74. Edward Cooper, the Vice President of Total Wine's Public Relations and Community Relations, testified that Total Wine frequently allows local groups to use its "wine education center" for the hosting of charitable fund raisers.
75. Doug Junker, the Bloomington Licensing Examiner, testified that Total Wine's listing of its charitable events held on their licensed premises as 'tastings' for a dollar value may not qualify under the state statutes prohibiting the opening of liquor product on the premises of an off-sale liquor license under the educational exception.
76. Frank Ball, a retired police officer and past director of the Minnesota Alcohol, Gambling Enforcement Division, testified on behalf of the Minnesota Licensed Beverage Association ("MLBA") about the history of the current alcohol regulations and his concern that liquor laws continue to run from person and premises and to prohibit all sales practices aimed at increasing alcohol consumption. The problem, he said, with the Tied Houses was that it was contracted to sell exclusively one manufacturer's product and their only goal was increasing sales.
77. Mr. Ball also expressed concern about Total Wine's practice of selling liquor below cost in violation of Minnesota Statutes §325D.04, which states,

Any retailer . . .engaged in business within this state, who sells, offers for sale or advertises for sale, any commodity, article, goods, wares, or merchandise at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares, or merchandise for the purpose or with the effect of injuring a competitor or destroying competition, shall be guilty of unfair discrimination; and, upon conviction, subject to the penalty therefor provided in section 325C.071. (a misdemeanor) Any retailer. . who sells goods in any part of this state at prices lower than those exacted by

the person elsewhere in the state for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy, or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of section 325D.071; provided, that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in prices in an endeavor made in good faith to meet the legal prices of a competitor selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area. The inhibition against sales below cost or locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination in substance or fact, effected in violation of the spirit and intent of sections 325D.01- 07.

78. William Griffith, an attorney for the MLBA, testified and expressed concern about Total Wine's pattern and practice of serious liquor law violations and that initially Total Wine had failed to disclose these violations to the cities where they sought licenses and that it was only after his associate, Jacob Steen, found the New Jersey violations did the Applicant agree to supplement its license applications. He disagreed with Mr. Trone's characterization of the New Jersey monetary sanctions as "costs" because they are listed on New Jersey state records as "fines". Mr. Griffith stated that \$1 million in fines is significant and must have had a significant basis.
79. Mr. Griffith also expressed concern about the closed manner in which Total Wine obtained its licenses in Roseville and Burnsville. It was able to acquire just the name of the business entity and the right to be first in line in a closed system of licensure. It remains, he said, a mystery what happened to the former stores' inventories.
80. Mr. Griffith reiterated Mr. Ball's statement that Total Wine's practice of selling liquor below cost violates the law and that it is motivated by a desire to limit the ability of other vendors to compete in this marketplace.
81. Finally, Mr. Griffith alleged that Total Wine does not take due care to abide by the law.

82. Steve Burwell, the owner and operator of Roseville's Fairview Wine & Spirits, expressed concern that Total Wine was able to obtain licenses in a closed system that were specifically reserved for them. He alleges that Total Wine's characterization of its business as a "destination location" is calculated to minimize the ability of Total Wine to run others out of the business. The first businesses to be run out are small, local businesses. He testified that his six pack beer sales have plummeted.
83. Dustin Harkins, a Bloomington home owner and sommelier, questioned why Total Wine would build out a full liquor store before it ever had a Bloomington license. He was concerned about the casual attitude of David Trone, calling Total Wine a 'Toys R Us for adults'. Harkins said liquor is a serious, highly regulated business. He also disputed Trone's allegation that the local liquor stores are using the government as a foil to stop us so that the local liquor stores can retain their dirty stores.
84. Jennifer Scholler, is an owner of a Minneapolis liquor store and a MLBA executive board member. Her family has owned a store for 55 years. She stated that she had seen merchandisers (wholesalers) perform duties in the Total Wine stores that they do not in local liquor stores, such as stocking the shelves. There's unfair competition, we don't sell below cost and we call out violations. These guys are scary bullies. Total Wine needs to 'do its homework' and learn and follow the rules. She also said that Total Wine should not conduct wine tastings on the premises; that violates the law.
85. Ted Farrell, the president of Haskells Wine & Spirits, an 80 year-old business, with 20 years in Bloomington, stated "We welcome competition; it makes us better". "Talk about fines, in 80 years we haven't had over \$2,000 in fines. If you were required to \$1 million – something bad happened." Even \$50,000 per year is an amazing fine or reimbursement he said. As to the Florida instance- the paper work issue, there is something there questionable, he said. A one million dollar payment for Haskells would wipe us out he testified. He characterized Trone's attitude as "Go ahead and fine me and I will find a way to take care of it".
86. Rachel Engebretson, stated she is a Bloomington business owner and represents MGM Liquor (Palace Wine and Spirits). She stated that Minnesota standard for license suitability should include analysis of the violations Total Wine attempts to sweep under the rug. These violations were not disclosed in hundreds of license applications. She stated that Total Wine should have exercised more diligence in submitting its license applications than simply cutting and pasting from prior applications when they are selling a controlled substance; they should better track their violation history and it is surprising that Total Wine was so sloppy in their license applications given their resources. Liquor is not, she stated, a free market commodity; it is highly regulated.

Engebretson cited the many social problems and costs associated with cheap alcohol. The \$687 per capita cost to Minnesota residents, she stated, is too high.

J. Total Wine's Testimony and Closing Statement:

87. Total Wine's counsel, Mark Jacobson, argued that the City of Bloomington should issue this license because not one other city has found Total Wine's past business practices and moral character a problem; the City would be the first.
88. He further argued that despite the settlement in New Jersey, the Total Wine stores continue to operate there.
89. David Trone testified that generally his competitors "manipulate the government" to attempt to keep Total Wine from their areas, that he believed the opposition in Minnesota was of "unprecedented proportions"; however, when asked if he believed that the MLBA or others had manipulated the City of Bloomington, he answered, "No" and when asked if he believed the City of Bloomington had delayed the process, he similarly responded, "No".
90. When asked in the context of the Applicant's violation history what cautions would Total Wine take in Minnesota, David Trone responded that he has a big learning curve in every state he does business, "a salsa jar too big, a mini bottle sold for a penny too low", "I was guilty, mea culpa".
91. David Trone testified that Total Wine has the best inventory tracking system in the liquor business. It tracks inventory in 'real time' with 15 second updates that include the location of the product in the store; however Total Wine has no centralized system of tracking its violation history with new license applications simply being cut and pasted from prior license applications.
92. David Trone testified that Total Wine fights "tooth and nail forever" and that he spent \$1 million in Texas "needlessly" to fight the Gabriel allegations and that he has spent approximately \$2 million to obtain his Minnesota licenses. He attributed the cost and length of the Gabriel contest to the fact that the plaintiff was related to a county judge.
93. David Trone characterized the Applicant's past liquor law violations as "not earth shattering" and commented about the 23 count grand jury indictment in Pennsylvania that a grand jury could indict a "ham sandwich".

CONCLUSIONS OF LAW

1. Minnesota law, Minn. Stat. §§ 14.50, 14.55, 340A.401, and 340A.503, subd. 2(1) provides the Administrative Law Judge and Bloomington City Council the authority to conduct this proceeding and to consider whether the Applicant's liquor license application should be approved. The role of the Administrative Law Judge is to make findings and conclusions, and recommendations on that subject.

2. The City gave the Applicant proper and timely notice of the hearing in this matter, and the City has complied with all of the law's substantive and procedural requirements.

3. Minnesota law gives municipalities the authority to issue or deny off-sale liquor license applications subject to certain statutory limitations at Minn. Stat. §340A.402, MN Rule 7515.0410 and Bloomington City Code §13.46.

4. The City of Bloomington is a municipal corporation organized under state law.

5. The primary issue in this case relates to the Applicant's suitability for licensure under Bloomington City Code §13.46 (1) standard for "good moral character and repute", as set forth in MN Rule 7515.0410 (B), which states:

The applicant shall have good moral character and reputation. An applicant does not have good moral character and reputation if, based on past activities or criminal record, the applicant poses a threat to the public interest or to the effective regulation and control of alcohol or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods and activities in the manufacture, sale, distribution, or possession for sale or distribution of alcohol or the carrying on of the business and financial arrangements incidental to the manufacture, sale, distribution, or possession for sale or distribution of alcohol.

6. The burden of proof is upon the Applicant to demonstrate that it possesses the requisite qualifications for licensure and to rebut the allegations that it is not of good moral character by a preponderance of the evidence. *Application of City of White Bear Lake*, 247 N.W.2d 901 (Minn. 1976).

7. There is no liberty or property right to a liquor license. *Country Liquors, Inc. v. City of Minneapolis*, 264 N.W.2d 821 (Minn. 1978).

8. Unlike land use denials, the denial of a liquor license need not be based on "clearly expressed restrictions". *Chanhassen Estates Resident Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984).

9. No citizen has an inherent or vested right to sell intoxicating liquors. *Bourban Bar & Café Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991) citing *Sabes v. City of Minneapolis*, 120 N.W.2d 871, 875 (Minn. 1963).

10. A prospective licensee must do more than overcome the disqualifiers in state and local law, it must demonstrate suitability for licensure; a license can be denied whenever its grant would appear contrary to the public interest. *Polman v. City of Royalton*, 249 N.W.2d 466, 467 (Minn. 1977).

11. A city may deny a license based upon projected ill-effects of the licensee on the public good. *Country Liquors*, *supra* at 825. See also, *Linn v. City of Newport*, unpublished, 2013 WL 1707682 (Minn. App., Apr. 22, 2013).

12. A license denial can be based on any credible evidence of the Applicant's careless disregard of the laws regulating the sale of alcohol, including cases that were negotiated short of a criminal conviction or a sustained violation on the original charges. *Godfather, Inc. v. City of Bloomington*, 375 N.W.2d 68 (Minn. App. 1985), *review denied* (Dec. 13, 1985).

13. Generally, courts will only intervene in a municipal licensing decision where there is a demonstrated abuse of discretion and will grant relief from unreasonable, arbitrary, capricious, or fraudulent acts. A decision is arbitrary and capricious if it is an exercise of will rather than judgment, is based on whim, or is devoid of articulated reasons. *Wadja v. City of Minneapolis*, 246 N.W.2d 455, 457 (Minn. 1976).

14. The City has authority to deny a liquor license by virtue of its police power, and as such, any denial will be upheld under a rational-basis scrutiny where it has for its object the public health, safety, morality or welfare and where it is reasonably related to the attainment of those objectives. *Kayo Oil Co. v. City of Hopkins*, 397 N.W.2d 612, 614-15 (Minn. App. 1986).

15. Minnesota liquor laws give municipalities, which feel most directly the impacts of alcohol abuse, wide discretion to grant or deny a liquor license and it is not arbitrary or capricious for there to be different standards for license issuance between individual cities even within the same metropolitan area. The fact that other suburban communities have granted the Applicant a license does not imply that a denial by Bloomington would be without rational basis. See, *Southern Wine and Spirits of America, Inc. v. Division of Alcohol and Tobacco Control, et al.*, 731 F.3d 199 (8th Cir. 2013).

16. Applicant in this case has not articulated any viable equal protection claim should this license be denied; the City of Bloomington has high standards for license issuance and the Applicant belongs to no protected class group.

17. Retail Services and Systems, Inc. (RSSI") is inextricably intertwined with the Applicant. It is owned by David and Robert Trone, along with five trusts held for the benefit of their children. It is listed by David and Robert Trone as their employer. In RSSI's own pleadings in the matter of *Retail Services and Systems, Inc. v. Total Wine & Spirits*, Case 3:12-cv-00049, filed January 11, 2012, in the U.S. District Court for the District of Connecticut, RSSI alleged that "RSSI owns and operates at least 76 wine and alcohol retail stores throughout the United States under the TOTAL WINE Marks. It employs more than 2,000 individuals, all dedicated to providing the best selection of wine, spirits, beer and related products....RSSI has operated the Total Wine stores since 1991. RSSI also owns and operated the www.totalwine.com website."

18. The business history of RSSI and all other business entities owned and operated by David Trone or Robert Trone are relevant to the issue of suitability for licensure. Any failures by the Applicant, including RSSI, to exercise meaningful control of its other liquor businesses is relevant to the issue of whether or not this Applicant's business will be detrimental to the public good.

19. The Bloomington City Code requires detailed information about the persons other than the Applicant with an interest in the business, or any element thereof, to facilitate the City's ability to pierce the corporate veil to reveal disqualified or ineligible applicants under a different corporate name or guise, and expose to the City the background of the real parties in interest for the license for the purpose of determining suitability for licensure, as well as to facilitate the future ability to impose meaningful sanctions on the real parties in interest, and to compile an accurate violation history to impose progressive sanctions.

20. Credible evidence was presented that the Applicant engaged in License Subterfuge calculated to avoid Pennsylvania laws limiting the number of licenses any one licensee may hold by use of David Trone's 'consulting firm' RSSI and through the use of at least five 'straw man' licensees in 1992. This evidence was not rebutted by the Applicant by a preponderance of the evidence.

21. Credible evidence was presented that the Applicant again engaged in License Subterfuge calculated to avoid New Jersey's laws limiting the number of license any one licensee may hold again by use of David Trone's 'consulting firm' RSSI in 2002. This evidence was not rebutted by the Applicant by a preponderance of the evidence.

22. Credible evidence was presented that the Applicant attempted to engage in License Subterfuge in violation of the Texas laws in 2013. The civil lawsuit contesting the

issuance of a San Antonio license was resolved when Total Wine withdrew its initial application and resubmitted an application including RSSI as an applicant. This evidence was not rebutted by the Applicant by a preponderance of the evidence.

23. Credible evidence was presented that the Applicant, despite its state of the art inventory tracking technology, was not able to provide clearly formatted delivery invoices and clear records of taxes being paid on the liquor “imported from Total Wine’s out of state warehouse” to its Melbourne, Florida store in 2013. This evidence was not rebutted by the Applicant by a preponderance of the evidence.

24. Credible evidence was presented that the Applicant advertised and sold alcoholic beverages below cost in Connecticut during the period of December 26, 2012 – March 14, 2013, in violation of state laws prohibiting sales below cost. The Applicant testified that this was due to a printing error. An “offer in compromise” was negotiated in that case that included corrective action and a fine.

25. Credible evidence was presented that the Applicant had four new violations of sales below cost in New Jersey stemming from February 2014 which resulted in warning letters. This evidence was not rebutted by the Applicant by a preponderance of the evidence.

26. Credible evidence was presented that the Applicant has violated a variety of states’ Three-tiered System laws by having wholesalers perform stocking duties on its licensed premises. (Testimony of Jennifer Scholler). Violations in Pennsylvania from 1987 – 2006, include “unlawful allowances or rebates” (86-1958, 86-3330/ 87-0545, 88-0126, 88-129, 88-1538). In Texas, the Applicant was charged with six counts of selling alcoholic beverages to a retailer on the delinquent list in 2012. Tied-House violations included “offered and/or gave things of value as inducement to purchase alcohol” (98-0912, 98-1333, 98-1035, 98-1003, 98-1364, 98-1368, 98-1365).

27. Credible evidence was presented that the Applicant in its Roseville store has sold liquor below cost and that the Burnsville store has advertised product below cost. The Applicant, through its attorney, argued that in order for sales below cost to constitute a violation of Minnesota Statute §325D.04, must be done with the purpose or the effect of injuring a competitor or destroying competition. (Testimony of Jay Nelson, David Hautman, and Steve Burwell.)

28. Credible evidence was presented that the Applicant intends to, or predicts that it will, by its sale of products below cost, put the competition out of business. (Testimony of Jay Nelson).

29. While a City has authority to impose conditions on a liquor license prior to its issuance *Bergmann v. City of Melrose*, 420 N.W.2d 663, 665-66 (Minn. App. 1988) and *Anton's Inc., v. City of Minneapolis*, 375 N.W.2d 504, 508 (Minn. App. 1985) it has very limited authority to impose conditions after a license's issuance. *In Re On-Sale Liquor License, Class B*, 763 N.W.2d 359 (Minn. App. 2009). Moreover, when asked, David Trone, could identify no proactive measures to be initiated at the Bloomington store, should a license be granted, that would adequately avoid future law violations in the operation of that enterprise.

30. The evidence in this case raises reasonable concerns about the Applicant's willingness or ability to comply with the legal requirement that intoxicating liquor retailers purchase all of their liquor from a licensed Minnesota wholesaler from a stock maintained in Minnesota warehouse in compliance with MN Rule 7515.0520 in combination with Minn. Stat. §340A.305. These concerns have their basis in the Melbourne Florida case, including the statements of now former Total Wine manager Chris Berthelson (Finding #57), the Florida Pike Brewing case in 2010 (Finding #56), the *Gabriel's' Liquor* pleadings, affidavit and injunctive order (Finding #63), the Texas sales to a permittee on the delinquent list in 2012 (Finding #67) and the 1988 Pennsylvania purchase from an unlawful distributor (Finding #35) exacerbated by the sheer volume of the proposed store's inventory.

31. The evidence in this case raises reasonable concerns about the Applicant's willingness or ability to comply with the legal restrictions on negotiating volume discounts with wholesalers, set forth in Minn. Stat. §340A.312, that limit the quantities of wine or spirits eligible for a volume discount. This concern has its basis in the case of *Callahan v. A.E.V., supra* (Finding #41), the Gabriel affidavit (Finding #63) and David Trone's testimony that he aggressively negotiates volume discounts for all of his stores, which is exacerbated by the Applicant's numerous record keeping violations (Findings #32, 36, 47, 52 and 86).

32. The evidence in this case raises reasonable concerns about the Applicant's willingness or ability to comply with the state and local laws prohibiting retailers from suggesting, requesting, demanding, or accepting any gratuity or reward or promise thereof from any representative of a manufacturer or wholesaler of alcoholic beverages, including in-store servicing or stocking. MN Rule 7515.0620. This concern is premised upon the testimony of Jennifer Scholler and the Florida 2011 Tied House Evil Official Notice (Finding #55).

33. The evidence in this case raises reasonable concerns about the Applicant's willingness or ability to comply with Minn. Stat. §325D.04 prohibiting the retail sale of product below cost. This concern is premised upon the 2013 Connecticut case, the four New Jersey 2014 cases for Illegal Sales Below Cost (Finding #52), and the Texas 2012 Deceptive Marking Practices case (Finding #66).

34. The evidence in this case raises reasonable concerns about the Applicant's willingness or ability to comply with state laws restricting the service of alcoholic beverages within the premises of an off-sale liquor store. Minn. Stat. §§340A.419, 340A.510, 340A.418, 340A.4041 and 340A.414. These concerns are premised upon the testimony of Edward Cooper relating to the use of the room that is variously referred to on the Total Wine Burnsville and Roseville websites as the "Conference Room", "Education Center" and "Room for Your Private Beer & Wine Tasting Party", the websites' description of the functions allowed for use of the room (including alumni gatherings, birthday parties, bridal showers, company outings...), with complementary wine tastings for seated meetings of 14 or more attendees. The use of the room, as advertised, goes beyond charitable auctions. (Attached Total Wine website printouts). Moreover, the Applicant has on at least one occasion hosted an event at the proposed store location in which food was served, but no temporary food license application was submitted to the City and no notice of the event was provided to the City. The City has expressed serious concerns about its ability to adequately police the use of this room in compliance with law.

35. The evidence in this case raises reasonable concerns about the Applicant's 'education center' usage policy being in compliance with state and local laws. (*Id.*)

36. The evidence in this case raises reasonable concerns about the Applicant's overall willingness to comply with laws that interfere with its business model in light of the pervasive past pattern and practice of law violations, the fact that the owners of the Applicant were complicit in the most serious of the violations, and that David Trone appeared by his testimony to exhibit a careless disregard for the law. This disrespect for law is premised on the following: 1) Trone's description of his violations as not 'earth shattering' (Finding #44); 2) that these enforcement actions resulted in "NO CHANGE" (capitalized to reflect emphatic tone of David Trone testimony) to his Pennsylvania and New Jersey business practices (Finding #44); 3) Trone's description of his revenge against the lead plaintiff in the *Callahan* case, (*Id.*); 4) His statements that the government is being used by his competitors to manipulate the system against him, rather than to take responsibility for his prior wrongdoings (Finding #89); and 5) His description of the outcome of the Melbourne Florida cases as "being thrown in the garbage where they belong" (Finding #58). Mr. Trone's testimony further reflected a predisposition towards lawlessness, by his statements about the insignificance of the \$1 million monetary sanction in New Jersey, which was satisfied just four years prior to his submission of the initial license application in Bloomington (Finding #53), the 23 count indictment in Pennsylvania being the result of the grand jury being capable of indicting a 'ham sandwich' (Finding #93), and his statements about the insignificance of all of his past violations in light of his ability to satisfy any fine.

37. The sale of liquor is very different from the sale of groceries, it is a highly regulated business with strict controls separating the three tiers of the distribution chain, and

other controls limiting one entity's domination of the market for what is undeniably a highly addictive substance. A license may be denied whenever its grant is deemed contrary to the public interest. The standard of 'good moral character and repute' requires at its essence the vendor's absolute commitment to understand and strictly comply with the laws applicable to the sale, distribution, or possession for sale or distribution, of alcohol or the carrying on of the business and financial arrangements incidental to the sale, distribution, or possession for sale or distribution, of alcohol.

Respectfully submitted,

CITY OF BLOOMINGTON

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