



CITY OF CAMBRIDGE

BOARD OF ZONING APPEAL

831 Massachusetts Avenue, Cambridge MA 02139

617-349-6100

BZA Application Form

BZA Number: 226790

General Information

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: X Variance: Appeal:

PETITIONER: Mark Pesce, Owner C/O Beantown Donuts LLC

PETITIONER'S ADDRESS: 72 Junction Square Drive , Concord, MA 01742

LOCATION OF PROPERTY: 65 Jfk St., Cambridge, MA

TYPE OF OCCUPANCY: Dunkin' Donuts (Fast Order or Quick-Service Food) **ZONING DISTRICT:** Business B Zone -HSQ (Harvard Square)

REASON FOR PETITION:

/Ownership Change/

DESCRIPTION OF PETITIONER'S PROPOSAL:

Change of Ownership - Change of Ownership - Operating a Dunkin' Donuts is not an allowed use in the Harvard Square Overlay District. Zoning relief is necessary to operate.

"Special Permit issued for a Fast Order or Quick-Service Food Establishment hereunder may be utilized only by the owner or operator of such establishment as described in the application documents or as those documents may be modified by the conditions of the Special Permit as granted"

SECTIONS OF ZONING ORDINANCE CITED:

Article: 11.000 Section: 11.30 (Fast Order Food Establishment),
Article: 10.000 Section: 10.40 (Special Permit)
Article: 4.000 Section: 4.35.0 (Fast Order or Quick-Service Food Establishment)

Original
Signature(s):

(Petitioner (s) / Owner)

MARK PESCE

(Print Name)

Address:
Tel. No.

72 Junction Square Dr. Concord, MA 01742
978-206-2469

2023 JUL 19 PM 3:15
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

CITY OF CAMBRIDGE
SPECIAL PERMIT
2023 JUL 19 10:30 AM

UNITED STATES GOVERNMENT

OFFICE OF THE SECRETARY OF DEFENSE

Department of Defense, Washington, D.C. 20301



FORM NO. 10 (REV. 10-1-79)

MEMORANDUM FOR THE SECRETARY OF DEFENSE

DATE: 10/15/79

SUBJECT: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

4. [Illegible]

5. [Illegible]

6. [Illegible]

7. [Illegible]

8. [Illegible]

9. [Illegible]

10. [Illegible]

11. [Illegible]

12. [Illegible]

13. [Illegible]

14. [Illegible]

15. [Illegible]

[Handwritten Signature]

[Illegible Title]

10/15/79

10/15/79

[Illegible]

BZA APPLICATION FORM - OWNERSHIP INFORMATION

To be completed by OWNER, signed before a notary and returned to The Secretary of the Board of Zoning Appeals.

I/We John P. DiGiovanni - General Partner of Trinity Realty II, LLC (Kennedy and Eliot Realty Trust)
(OWNER)

Address: 50 Church Street, 5th Fl - PO Box 380212, Cambridge, MA 02238

State that I/We own the property located at 65 John F. Kennedy Street, which is the subject of this zoning application.

The record title of this property is in the name of _____
DiGiovanni, Louis F Trustee of Kennedy and Eliot Realty Trust

*Pursuant to a deed of duly recorded in the date _____, Middlesex South County Registry of Deeds at Book 150806, Page 215; or Middlesex Registry District of Land Court, Certificate No. _____
Book _____ Page _____.

John P. DiGiovanni

SIGNATURE BY LAND OWNER OR AUTHORIZED TRUSTEE, OFFICER OR AGENT*

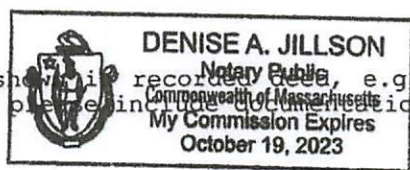
*Written evidence of Agent's standing to represent petitioner may be requested.

Commonwealth of Massachusetts, County of Middlesex

The above-name John Di Giovanni personally appeared before me, this 5th of June, 2023, and made oath that the above statement is true.

Denise A. Jillson Notary

My commission expires Oct. 19, 2023 (Notary Seal).



• If ownership is not shown in recorded deed, e.g. if by court order, recent deed, or inheritance, please include documentation.



Blueprint Strategies
A Division of TSG Consulting, LLC
279 East Central Street, #252
Franklin, MA 02038
508-969-1314
info@sweetgroupllc.com

May 15, 2023

Cambridge Board of Zoning Appeal
831 Massachusetts Avenue
Cambridge, MA 02139

**RE: Special Permit Application - 65 John F. Kennedy Street
Beantown Donuts LLC**

Dear Members of the Board of Zoning Appeal:

On behalf of my client Beantown Donuts LLC, please accept this application for a Special Permit. This application reflects a change of ownership with no other building or operational changes for the existing 65 John F. Kennedy Street Dunkin' Donuts location.

The Petitioner Mark Pesce, Owner/Manager of Beantown Donuts LLC a subsidiary of The Pesce Network actively runs over 40 Dunkin' locations in the MetroWest and Greater Boston area, as well as The Needham General Store. Mr. Pesce and his wife Megan Pesce run their businesses with a truly family-owned and hands-on mindset. Their passion for exceptional customer service, incredible employees and clean/sanitary stores is seen throughout their business locations. The enclosed Attachment B further details the Petitioner's extensive experience as an owner/operator.

The 65 John F. Kennedy Street location is managed by the Petitioner who currently operates several Dunkin' Donuts locations including; 1 Broadway, 808 Memorial Drive, 1001 Massachusetts Ave and 61 Church Street locations. The Petitioner proposes to maintain the current operating hours and has been issued applicable permits by the Cambridge ISD-Health Division upon completion of a comprehensive plan review and change of ownership inspection.

It is respectfully submitted that the current site presents an appropriate use within the BB (Harvard Square) Zoning District and will continue to benefit, and serve the commercial and residential neighborhood. Considering these factors, we kindly request that the requested relief be granted.

Sincerely yours,
Blueprint Strategies

A handwritten signature in black ink that reads 'Bridget Sweet'.

Bridget L. Sweet, LP.D.
President & Principal Consultant
Consultant/Agent for Beantown Donuts LLC

cc: Mark Pesce, Owner/Manager
Beantown Donuts, LLC

BZA Application Form

SUPPORTING STATEMENT FOR A SPECIAL PERMIT

Please describe in complete detail how you meet each of the following criteria referring to the property and proposed changes or uses which are requested in your application. Attach sheets with additional information for special permits which have additional criteria, e.g.; fast food permits, comprehensive permits, etc., which must be met.

Granting the Special Permit requested for 65 Jfk St., Cambridge, MA (location) would not be a detriment to the public interest because:

A) Requirements of the Ordinance can or will be met for the following reasons:

The proposed continued use is in conformity with the guidelines established under Article 11.30 of the Cambridge Zoning Ordinance for a Fast Order Food Establishment. The operation attracts patrons primarily from walk-in trade, will not create traffic problems, and will fulfill a need in this area of Harvard Square.

B) Traffic generated or patterns of access or egress would not cause congestion hazard, or substantial change in established neighborhood character for the following reasons:

This is solely an ownership change. The location has a lengthy history as a fast food use and will not represent a change in the existing character of the surrounding neighborhood or current traffic patterns. JFK Street is an active retail street with a high volume of pedestrian activity.

C) The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

This is solely an ownership change. Adjacent uses will not be adversely affected as they are similar in nature and complement one another. The patrons and occupants will continue to contribute to the customer base for this use.

D) Nuisance or hazard would not be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the City for the following reasons:

This is solely an ownership change. The continued use will be operated in conformity with all building, health, and safety regulations governing the operation of a retail food establishment.

E) For other reasons, the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance for the following reasons:

This is solely an ownership change. The continued use is consistent with the provisions of Section 11.30, particularly paragraph (d) which emphasizes the priority of "will attract patrons primarily from walk in trade as opposed to drive in or automobile related trade."

***If you have any questions as to whether you can establish all of the applicable legal requirements, you should consult with an attorney.**

E-Mail Address: brandi@acmdonuts.com

Date: _____

BZA Application Form

DIMENSIONAL INFORMATION

Applicant: Mark Pesce, Owner

Present Use/Occupancy: Dunkin' Donuts (Fast Order or Quick-Service Food)

Location: 65 Jfk St., Cambridge, MA

Zone: Business B Zone -HSQ (Harvard Square)

Phone: 978-206-2469

Requested Use/Occupancy: Dunkin' Donuts (Fast Order or Quick-Service Food)

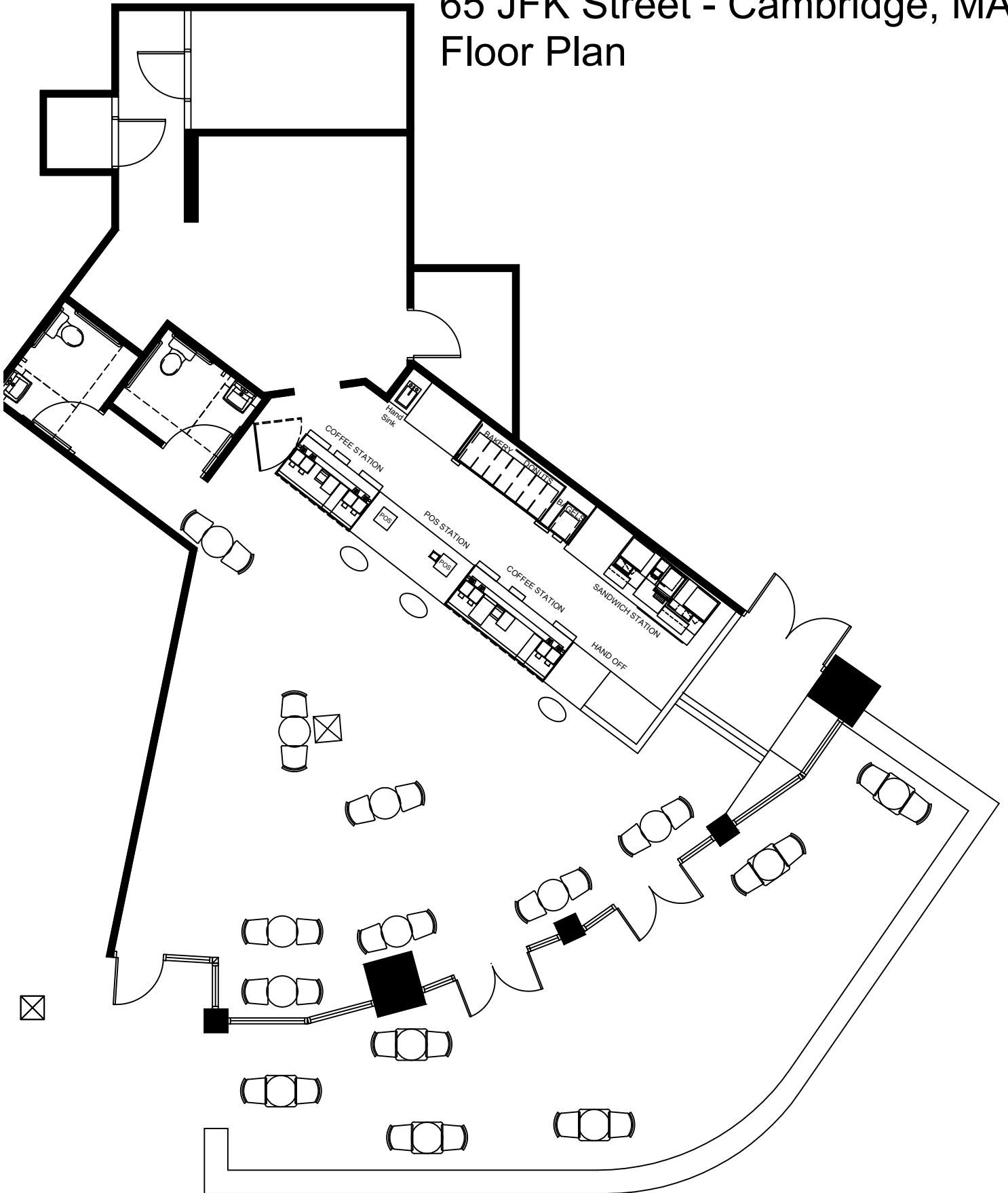
		<u>Existing Conditions</u>	<u>Requested Conditions</u>	<u>Ordinance Requirements</u>	
<u>TOTAL GROSS FLOOR AREA:</u>		28328 (Ground Floor Sq. Ft: 14,164)	no change	6269	(max.)
<u>LOT AREA:</u>		15,677	no change	-	(min.)
<u>RATIO OF GROSS FLOOR AREA TO LOT AREA: ²</u>		1.80	no change	4.0	
<u>LOT AREA OF EACH DWELLING UNIT</u>		n/a	n/a	n/a	
<u>SIZE OF LOT:</u>	<u>WIDTH</u>	n/a	no change	n/a	
	<u>DEPTH</u>	n/a	no change	n/a	
<u>SETBACKS IN FEET:</u>	<u>FRONT</u>	0	no change	0	
	<u>REAR</u>	0	no change	0	
	<u>LEFT SIDE</u>	0	no change	0	
	<u>RIGHT SIDE</u>	0	no change	0	
<u>SIZE OF BUILDING:</u>	<u>HEIGHT</u>	60 (2 units - 5 stories w/ parking)	no change	60	
	<u>WIDTH</u>	-	no change	-	
	<u>LENGTH</u>	-	no change	-	
<u>RATIO OF USABLE OPEN SPACE TO LOT AREA:</u>		-	no change	-	
<u>NO. OF DWELLING UNITS:</u>		0	no change	n/a	
<u>NO. OF PARKING SPACES:</u>		no change	no change	n/a	
<u>NO. OF LOADING AREAS:</u>		0	0	0	
<u>DISTANCE TO NEAREST BLDG. ON SAME LOT</u>		n/a	n/a	n/a	

Describe where applicable, other occupancies on the same lot, the size of adjacent buildings on same lot, and type of construction proposed, e.g; wood frame, concrete, brick, steel, etc.:

n/a

1. SEE CAMBRIDGE ZONING ORDINANCE ARTICLE 5.000, SECTION 5.30 (DISTRICT OF DIMENSIONAL REGULATIONS).

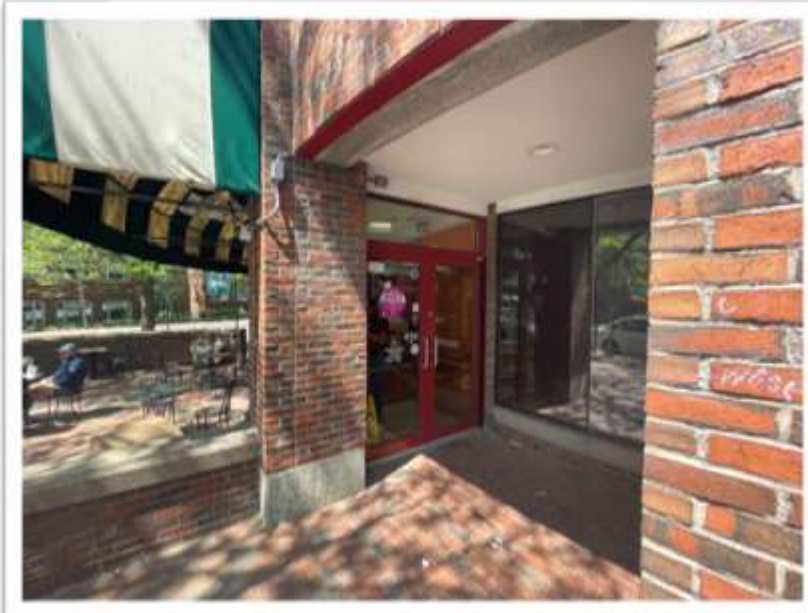
Dunkin' Donuts 65 JFK Street - Cambridge, MA Floor Plan

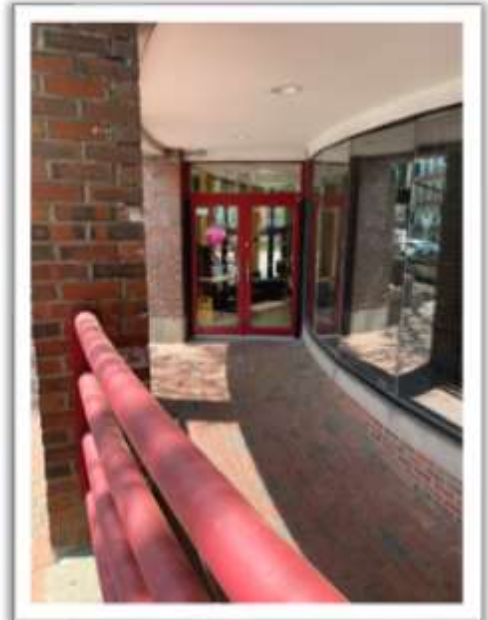




Dunkin Donuts
65 John F Kennedy Street
Cambridge MA 02138



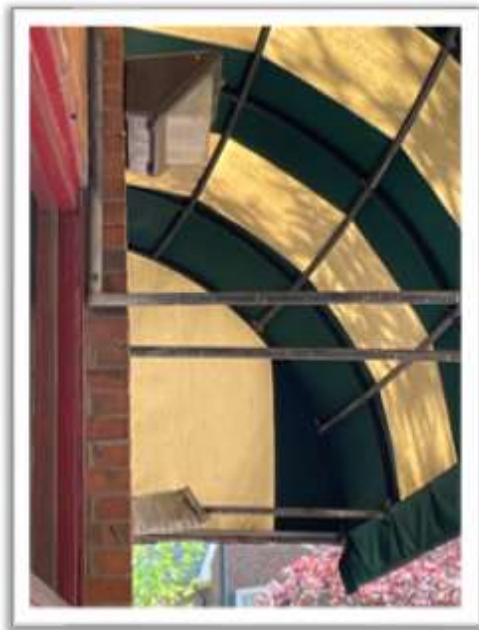




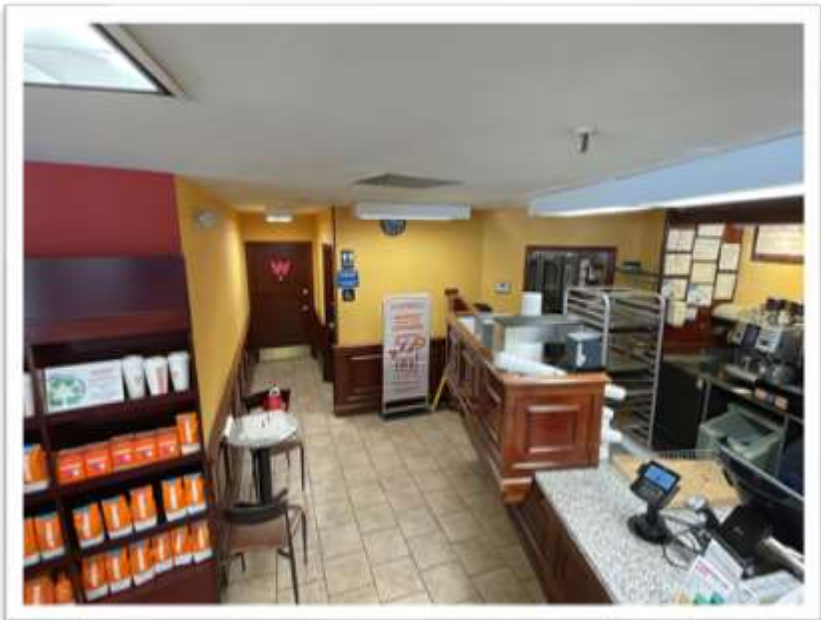


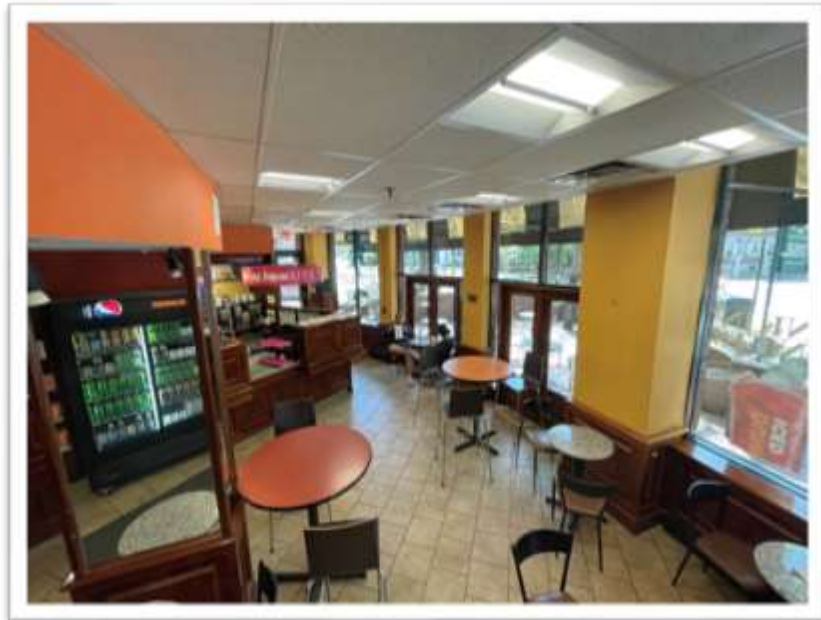
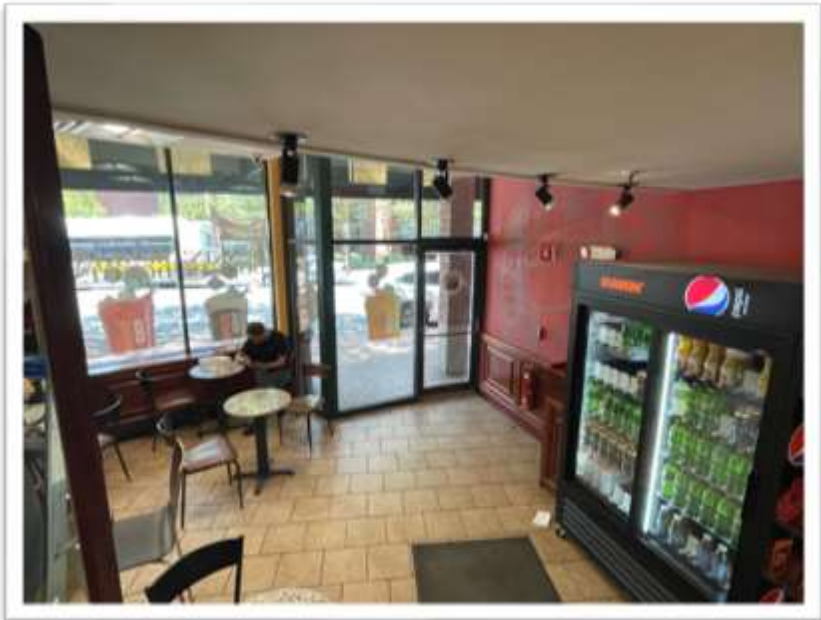
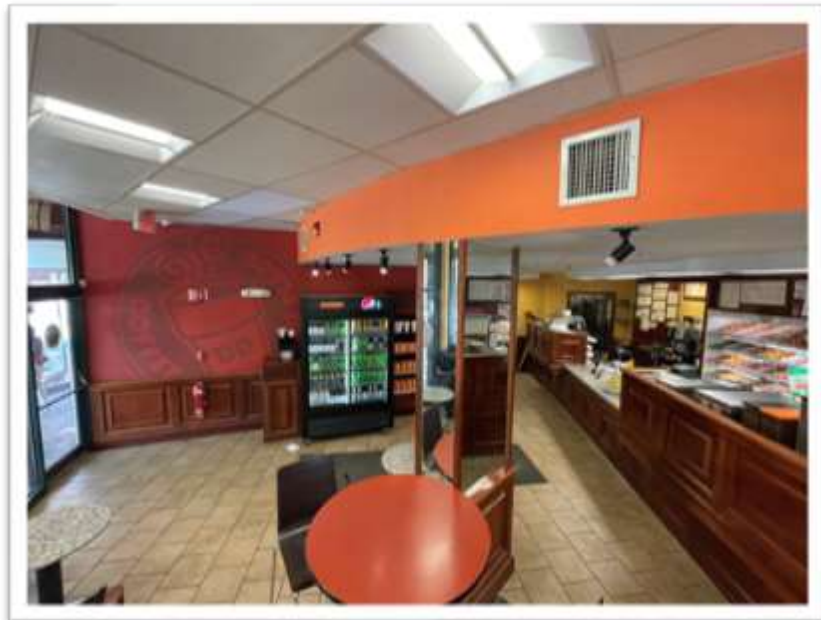
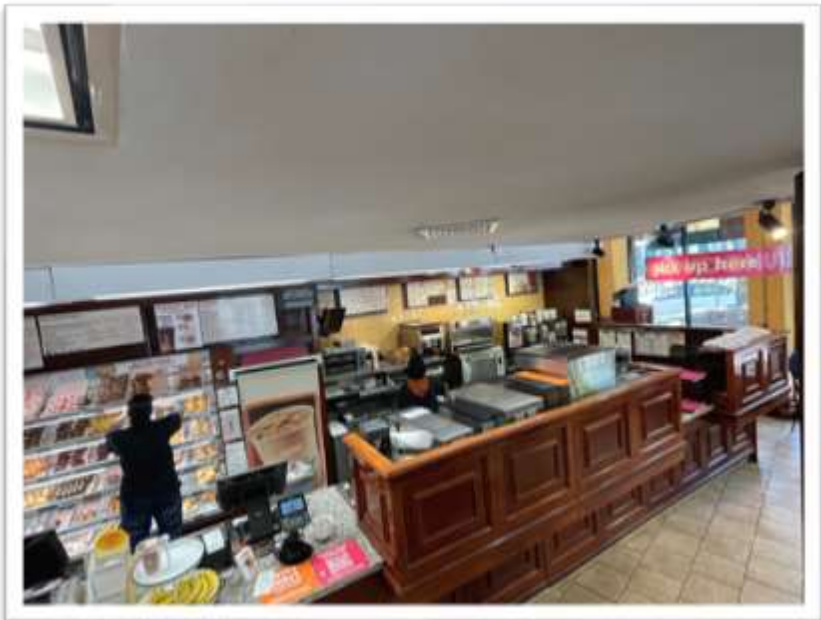


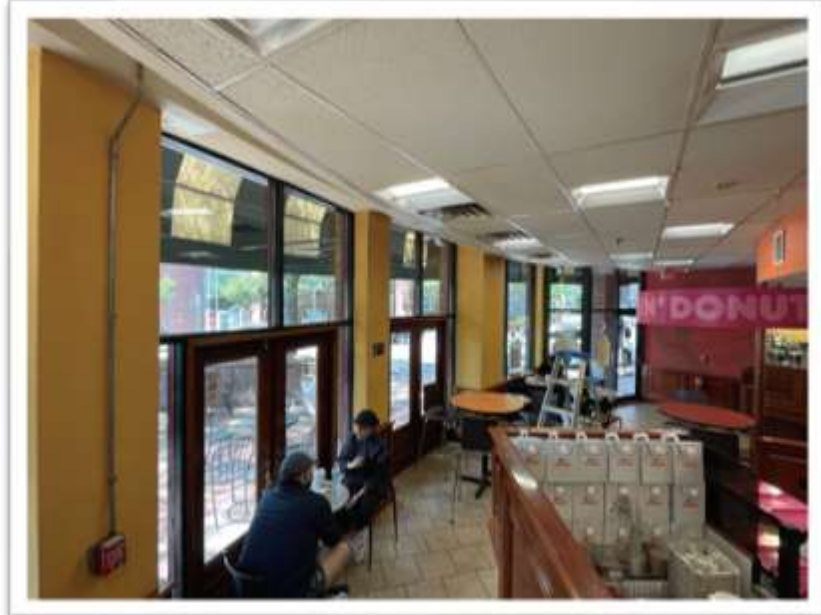


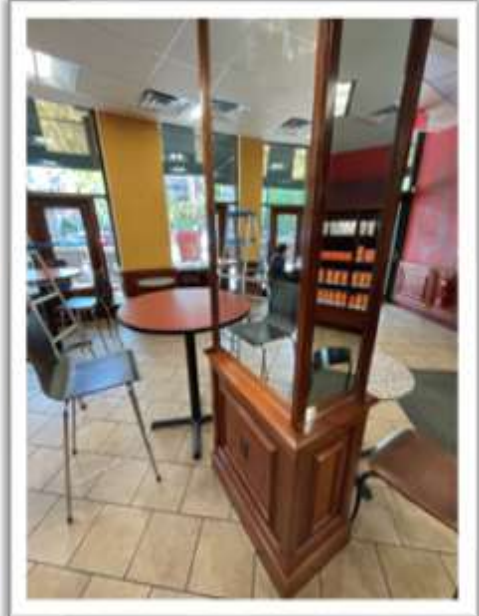


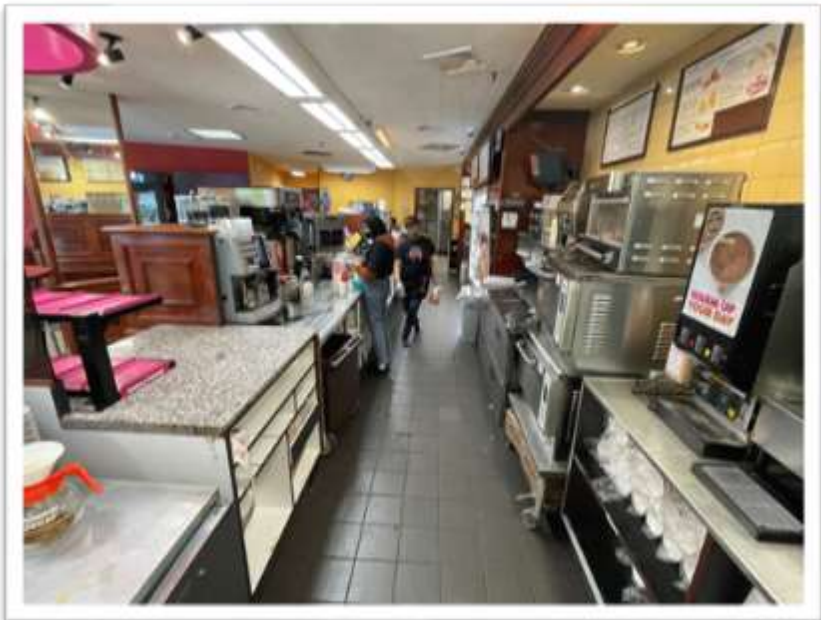




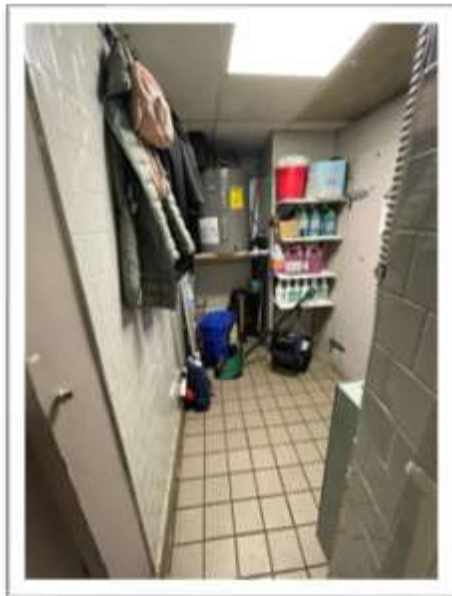


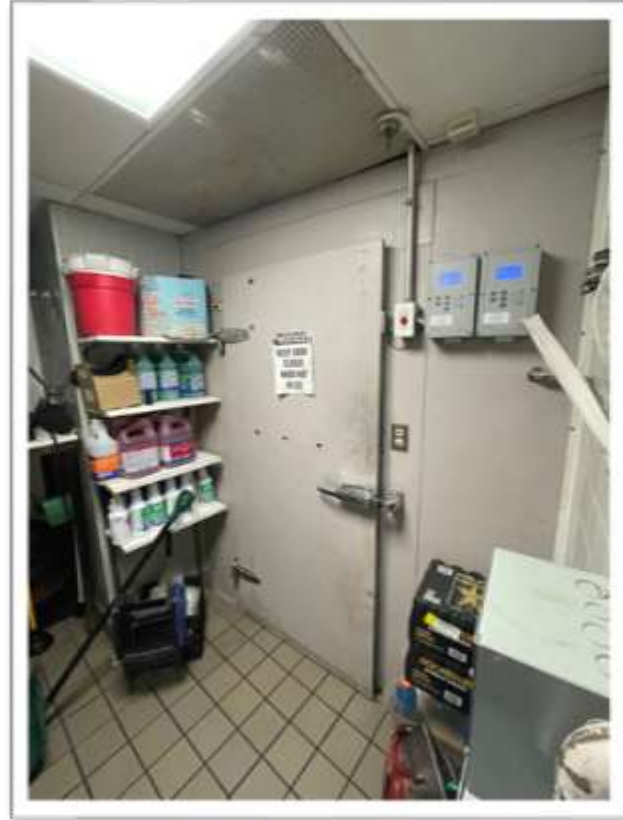
























Blueprint Strategies
A Division of TSG Consulting, LLC
279 East Central Street, #252
Franklin, MA 02038
508-969-1314
info@sweetgroupllc.com

May 15, 2023

Cambridge Board of Zoning Appeal
831 Massachusetts Avenue
Cambridge, MA 02139

**RE: Special Permit Application - 65 John F. Kennedy Street
Beantown Donuts LLC**

Dear Members of the Board of Zoning Appeal:

On behalf of my client Beantown Donuts LLC, please accept this application for a Special Permit. This application reflects a change of ownership with no other building or operational changes for the existing 65 John F. Kennedy Street Dunkin' Donuts location.

The Petitioner Mark Pesce, Owner/Manager of Beantown Donuts LLC a subsidiary of The Pesce Network actively runs over 40 Dunkin' locations in the MetroWest and Greater Boston area, as well as The Needham General Store. Mr. Pesce and his wife Megan Pesce run their businesses with a truly family-owned and hands-on mindset. Their passion for exceptional customer service, incredible employees and clean/sanitary stores is seen throughout their business locations. The enclosed Attachment B further details the Petitioner's extensive experience as an owner/operator.

The 65 John F. Kennedy Street location is managed by the Petitioner who currently operates several Dunkin' Donuts locations including; 1 Broadway, 808 Memorial Drive, 1001 Massachusetts Ave and 61 Church Street locations. The Petitioner proposes to maintain the current operating hours and has been issued applicable permits by the Cambridge ISD-Health Division upon completion of a comprehensive plan review and change of ownership inspection.

It is respectfully submitted that the current site presents an appropriate use within the BB (Harvard Square) Zoning District and will continue to benefit, and serve the commercial and residential neighborhood. Considering these factors, we kindly request that the requested relief be granted.

Sincerely yours,
Blueprint Strategies

A handwritten signature in black ink that reads 'Bridget Sweet'.

Bridget L. Sweet, LP.D.
President & Principal Consultant
Consultant/Agent for Beantown Donuts LLC

cc: Mark Pesce, Owner/Manager
Beantown Donuts, LLC

FOURTH AMENDMENT TO LEASE,
CONSENT TO ASSIGNMENT, AND ASSUMPTION AGREEMENT

Reference is made to an instrument captioned “Retail Lease” between Trinity Realty Limited Partnership II, a Massachusetts limited partnership, as Lessor, and Eliot Street Donuts, Inc., a Massachusetts corporation, as Current Lessee (such instrument identifies “Duarte M. Carvalho or nominee which shall be controlled by Duarte M. Carvalho” as Current Lessee, and Eliot Street Donuts, Inc. is the nominee controlled by Duarte M. Carvalho that has been designated as Current Lessee) dated June May 24, 1996, as amended by a First Amendment to Lease dated July 13, 2006 (the “First Amendment”), by a Second Amendment to Lease dated December 31, 2010 and by a Third Amendment to Lease dated September 29, 2015, relating to premises located in the building known as the “Harvard Square Parking Garage” located at 65 John F. Kennedy Street, Cambridge, (such instrument, as so amended, is referred to herein as the “Lease”). Any capitalized term used herein that is not defined herein shall have the meaning ascribed to such term in the Lease.

WHEREAS, on or about May 31, 2012, Trinity Realty Limited Partnership II was converted to a Massachusetts limited liability company known as Trinity Realty II, LLC, so that since the time of such conversion, Trinity Realty II, LLC has been (and continues to be) the Lessor under the Lease;

WHEREAS, Current Lessee operates a Dunkin Donuts shop under the trade name Eliot Street Cafe (the “Shop”) at the Premises, and pursuant to an agreement Current Lessee intends to sell substantially all of the assets of the Shop to Beantown Donuts, LLC (“Assignee”), a Massachusetts limited liability company that is owned by Mark A. Pesce (“New Guarantor”), and Assignee intends to purchase substantially all of the assets of the Shop from Current Lessee (the “Transaction”);

WHEREAS, in connection with the consummation of the Transaction, Current Lessee is to assign its interest in the Lease to Assignee, and Assignee is to accept such assignment and is to assume Current Lessee’s obligations under the Lease;

WHEREAS, Current Lessee and Assignee have requested Lessor’s consent to said assignment, and have also requested that Lessor agree to further amend the Lease as provided below, and Lessor has agreed to provide such consent and to so further amend the Lease, but only in accordance with the provisions of this Fourth Amendment to Lease, Consent to Assignment, and Assumption Agreement (“this Amendment”) and only if Assignee’s obligations to Lessor are guaranteed by New Guarantor pursuant to the attached Guaranty; and

WHEREAS, the Term of the Lease (as defined in the Lease) was scheduled to expire on October 31, 2022, and the parties have agreed to further reinstate the Lease by extending the scheduled end of the Term of the Lease through December 31, 2024.

NOW, THEREFORE, in consideration for their mutual agreements contained herein, and intending to be bound hereby, the undersigned hereby reinstate and amend the Lease and agree as follows:

FOURTH AMENDMENT TO FRANCHISE AGREEMENT

THIS FOURTH AMENDMENT TO FRANCHISE AGREEMENT (“Amendment”) is made this Jan 30, 2023, by and between Dunkin' Donuts Franchising LLC (hereinafter referred to as “Franchisor”); and Eliot Street Donuts, Inc., a Massachusetts Corporation (hereinafter referred to as “Franchisee”)

WITNESSETH:

WHEREAS, on March 10, 2003, Franchisor did enter into a Franchise Agreement with Franchisee (the “Franchise Agreement”) for the premises located at 65 Jfk Street, Cambridge, MA (the “Restaurant”); and

WHEREAS, the Original Franchise Agreement was previously amended on October 1, 2010 ("First Amendment"), and May 20, 2015 (“Second Amendment”), and July 28, 2020 (“Third Amendment”) (the Original Franchise Agreement, the First Amendment, the Second Amendment, and the Third Amendment are collectively referred to as the "Franchise Agreement"); and

WHEREAS, the parties desire to amend the Franchise Agreement to modify certain terms as hereinafter set forth;

WHEREAS, the term expired on October 15, 2022 and the franchisee continued to operate the Restaurant on a month-to-month basis thereafter.

NOW, THEREFORE, in consideration of mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. The above recitals are true and correct and, with all instruments referenced therein, incorporated herein by reference.

2. The following item(s) in the Contract Data Schedule of the Franchise Agreement is (are) hereby amended:

Item B. Dunkin’ Term: until December 31, 2024

Item G. Dunkin’ Remodel Date: December 31, 2024

3. Franchisee (and each partner, member or shareholder thereof), does hereby release, remise and forever

discharge Franchisor, its predecessors, successors and assigns, parents, subsidiaries and affiliated entities and their respective managers, members, officers, directors, agents, employees and representatives, past and present, of any and all of such entities, of and from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, reckonings, covenants, contracts, agreements, promises, damages, judgments, extents, executions, liabilities and obligations, both contingent and fixed, known and unknown, of every kind and nature whatsoever in law or equity, or otherwise, under local, state or federal law, against Franchisor which Franchisee or its predecessors in interest ever had, now have, or which they, their heirs, executors, administrators, successors, or assigns hereafter can, shall, or may have, for, upon or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents.

Without limiting the generality of the foregoing, but by way of example only, this Release shall apply to any and all state or federal antitrust claims or causes of action; state or federal securities law claims or causes of action; breach of contract claims or causes of action; claims or causes of action based on fraud or misrepresentation, breach of fiduciary duty, unfair trade practices (state or federal), and all other claims and causes of action whatsoever.

Franchisee (and each partner, member or shareholder thereof), further agrees to indemnify and hold harmless forever, Franchisor, its predecessor, successors and assigns, parents, subsidiaries and affiliated entities and their respective managers, members, officers, directors, agents, employees and representatives, past and present, against any and all claims or actions which hereafter may be brought or instituted against any or all of them, or their successors and assigns, by or on behalf of anyone claiming under rights derived from Franchisee, or any of them, and arising out of or incidental to the matters to which this Release applies.

Franchisee (and each partner, member or shareholder thereof), represents and warrants that it has not made any assignment of any right, claim or cause of action covered by this Release to any other person, corporation or other legal entity.

Franchisee (and each partner, member or shareholder thereof), and Franchisor agree that this Release is not intended nor shall it be construed as an admission of any wrongdoing or liability, and that it shall not be admissible in evidence in any suit or proceeding whatsoever as evidence or admission of any liability.

With respect to the matters hereinabove released, the Franchisee (and each partner, member, or shareholder thereof) knowingly waive all rights and protection, if any, under Section 1542 of the Civil Code of the State of California, or any similar law of any state or territory of the United States of America. Section 1542 provides as follows:

“1542 General Release; Extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

4. The Franchise Agreement is hereby ratified, in full force and effect, without modification or extinction,

except as expressly set forth in this Amendment. This Amendment shall be attached to and made a part of the Franchise Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE HEREUNDER SET THEIR HANDS AND SEALS THE DAY AND YEAR FIRST ABOVE WRITTEN.

(Franchisor)

Dunkin' Donuts Franchising LLC

DocuSigned by:
Lisa P. Stovey
By: Lisa P. Stovey

Vice President, Franchise Counsel

THE PARTIES BELOW SIGN INDIVIDUALLY ONLY AS TO THE GENERAL RELEASE PARAGRAPH UNLESS THE PARTY IS DEFINED AS THE FRANCHISEE IN THE PREAMBLE.

(Franchisee)

:

Eliot Street Donuts, Inc.

DocuSigned by:
Duarte M. Carvalho
By: Duarte M. Carvalho

Duarte M. Carvalho, President and Individually

Eliot Street Donuts Business Trust

DocuSigned by:
Duarte M. Carvalho
By: Duarte M. Carvalho

Duarte M. Carvalho, Trustee and Individually

DocuSigned by:
Arthur D. Rodrigues
By: Arthur D. Rodrigues

Arthur D. Rodrigues, Individually

DocuSigned by:
David G. Carvalho
By: David G. Carvalho

David G. Carvalho, Individually

THE DUARTE M. CARVALHO QUALIFIED
FRANCHISEE DUNKIN' DONUTS TRUST

DocuSigned by:
Duarte M. Carvalho
By: _____
2D88B52A31754E9...

Duarte M. Carvalho, Trustee and
Individually

1. Effective as of the Completion Date (as defined below), Lessor hereby consents to Current Lessee's assignment of its interest in the Lease to Assignee (the "Specified Assignment"). For the purposes hereof, the "Completion Date" shall mean the date when the consummation of the Transaction has occurred, and Current Lessee and Assignee have executed and delivered to Lessor a counterpart original of the document that effectuates the Specified Assignment (the "Assignment Document"). The parties hereby acknowledge that Lessor currently holds and will continue to hold from and after the Completion Date a security deposit in the amount of \$16,160 pursuant to the terms of the Lease. At such time as the Completion Date is established, the parties shall execute a written instrument acknowledging the Completion Date, but the failure of any party to execute such instrument shall not affect the Completion Date or any other provision of this Amendment. The foregoing consent does not (a) constitute or imply Lessor's consent to any assignment of the Lease other than the Specified Assignment or Lessor's consent to any sublease or other right of occupancy of the Premises or any portion thereof, or (b) constitute Lessor's consent to any alterations, improvements or additions to the Premises that Assignee may intend to make, and any such alterations, improvements or additions shall be subject to all applicable requirements of the Lease. From and after the Completion Date, Assignee shall be deemed to be the Lessee under the Lease, as amended hereby, subject to the provisions of this Amendment, including, without limitation, Paragraph 2 below. Notwithstanding the foregoing and notwithstanding the (past or future) delivery of any documents and agreements related to the Transaction (collectively, the "Transaction Documents") and the Assignment Document to Lessor, Lessor is not a party to the Transaction Documents or the Assignment Document, the Transaction Documents and the Assignment Document are not binding on Lessor (except that Lessor shall recognize the assignment of the Lessee's interest under the Lease pursuant to the Assignment Document), and the provisions of the Lease and this Amendment shall supersede the Transaction Documents and the Assignment Document in all respects as relating to Lessor.

2. The Lease, as amended by the Amendment, is referred to herein as the "Amended Lease". Effective as of the Completion Date, Assignee hereby assumes, and agrees to fully and punctually perform, fulfill and comply with, all of the agreements and other obligations of the Lessee under the Amended Lease, and agrees to be bound by the Amended Lease, to the same extent as if Assignee were the Lessee named therein, except that Assignee does not assume those agreements and other obligations of the Lessee under the Lease that were or are (according to the Lease) to be performed prior to the Completion Date. Assignee acknowledges that Assignee shall be primarily liable for all of such agreements and other obligations assumed by Assignee (jointly and severally with Current Lessee, to the extent provided below). The foregoing shall not relieve Current Lessee of any of its agreements or other obligations under the Amended Lease that were or are (according to the Amended Lease) to be performed on or prior to the Completion Date, and Current Lessee shall remain primarily liable for all of such agreements and other obligations, jointly and severally with Assignee (but if the Completion Date in fact occurs, then Current Lessee shall be released from, and not be liable for, agreements and other obligations that are (according to the Amended Lease) to be performed after the Completion Date, provided that Current Lessee shall nevertheless remain liable thereafter for the provisions of Section 18 of the Lease [which relates to indemnification] with respect to any circumstances, conditions or events that occurred or occur at any time on or prior

to the Completion Date). The foregoing also shall not relieve Duarte M. Carvalho (“Current Guarantor”) of any of Current Guarantor’s agreements or other obligations under the Guaranty, and Current Guarantor acknowledges and agrees that the Guaranty shall remain in full force and effect and shall be applicable to all agreements and other obligations of the Lessee under the Amended Lease (but if the Completion Date in fact occurs, then Current Guarantor shall be released from, and not be liable with respect to, agreements and other obligations that are (according to the Amended Lease) to be performed after the Completion Date, provided that Current Guarantor shall nevertheless remain liable thereafter with respect to the provisions of Section 18 of the Lease [which relates to indemnification] with respect to any circumstances, conditions or events that occurred or occur at any time on or prior to the Completion Date). If Lessor gives any notice of default under the Amended Lease to Assignee at any time on or prior to the Completion Date, then on the same day Lessor shall also give a copy of such notice to Current Lessee; and if any cure period is available under the provisions of the Amended Lease with respect to any default identified in any such notice, then Current Lessee shall have the right to cure such default provided that such cure is fully effected within such cure period, and Lessor agrees to accept any such cure that is effected by Current Lessee within such cure period.

3. Effective as of the Completion Date, the scheduled term of the Lease is extended through December 31, 2024. Accordingly, effective as of the Completion Date, the definition of “Term” contained in paragraph (e) of Section 1 of the Lease (as affected by Paragraph 1 of said Third Amendment to Lease) is deleted, and the following is substituted in place thereof:

(e) Term: The period commencing on the Commencement Date and continuing until December 31, 2024, unless sooner terminated as provided herein.

4. The parties acknowledge that there is no longer in effect any Extension Period or option to extend the Term of the Lease.

5. Effective as of the Completion Date, the Lease is further amended as follows:

(a) the definition of “Net Minimum Rental” as set forth in paragraph (h) of Section 1 of the Lease is hereby deleted in its entirety and replaced with “(h) Intentionally Omitted”.

(b) all references to “Net Minimum Rental” in the Lease are hereby deleted and replaced with “Percentage Rent”;

(c) in the fourth and fifth line of Section 3 of the Lease, the phrase “provided in Section 1” is hereby deleted; and

(d) Section 4 of the Lease is hereby amended as follows:

(i) the first and second paragraphs are hereby deleted in their entirety (the parties hereby acknowledge that the fourth paragraph was deleted pursuant to the First Amendment);

(ii) in the remaining paragraph, the first sentence is deleted in its entirety and replaced with “For each Lease Year, the Lessee will pay a rental (the “Percentage Rent”) equal to ten percent of the Gross Sales.”; and

(iii) the following shall be inserted at the end of the remaining paragraph:

“The Lessee will pay the Percentage Rent to the Lessor in arrears on the tenth calendar day of each month, beginning after the month in which the Commencement Date occurs. The Lessee will also pay \$1,733.33 per month for common area maintenance charges, which includes the Lessee’s trash and recycling costs, which such payment due at the same time as the Percentage Rent payment. The Lessee will pay the Percentage Rent and the trash payment through such online payment system as the Lessor shall designate from time to time.”

6. (I) Current Lessee and Current Guarantor jointly and severally represent and warrant to Lessor that (a) the execution, delivery and performance of this Amendment, and the consummation of the transactions contemplated hereby, have been duly authorized on behalf of Current Lessee and Current Lessee will deliver to Lessor evidence of such authorization, (b) this instrument constitutes the valid and binding obligation of Current Lessee and Current Guarantor, enforceable against Current Lessee and Current Guarantor in accordance with its terms, (c) the Lease is presently in full force and effect, (d) Current Lessee has not previously made any assignment or pledge of the Lease or of any interest under the Lease, and (e) Current Lessee has not previously subleased any portion of the Premises or otherwise permitted any occupancy of any portion of the Premises by any other party, and Current Lessee has paid rent and all other charges for the Premises and due under the Lease for the period through the date hereof.

(II) Assignee and New Guarantor jointly and severally represent and warrant to Lessor that (i) the execution, delivery and performance of this Amendment, and the consummation of the transactions contemplated hereby, have been duly authorized on behalf of Assignee and Assignee will deliver to Lessor evidence of such authorization, and (ii) this instrument and the attached Guaranty constitute the valid and binding obligations of Assignee and New Guarantor, enforceable against Assignee and New Guarantor in accordance with their respective terms.

(III) Lessor represents and warrants to Current Lessee, Current Guarantor, Assignee, and New Guarantor that (i) the execution, delivery and performance of this Amendment, and the consummation of the transactions contemplated hereby, have been duly authorized on behalf of Lessor, and (ii) this instrument constitutes the valid and binding obligations of Lessor, enforceable against Lessor in accordance with its terms.

(IV) The representations and warranties set forth above in this Paragraph 6 shall deemed to be repeated and made again as of the Completion Date. Current Lessee and Current Guarantor acknowledge that, to their knowledge, Lessor is not in default under any of the provisions of the Lease. Each of Current Lessee, Current Guarantor, Assignee and New

Guarantor shall indemnify and hold Lessor harmless from and against any and all losses, costs, expenses, damages, claims, obligations and liabilities, including court costs and reasonable attorneys' fees (specifically including court costs and reasonable attorneys' fees incurred in enforcing this sentence or in recovering damages or pursuing other remedies with respect to any breach of this sentence), incurred by Lessor as a result of or in connection with any breach of the representations or warranties made by such party set forth above in this Paragraph 6.

7. Except as amended hereby, the Lease is hereby ratified and confirmed and shall remain in full force and effect. Further, in recognition that it might be questioned whether this Amendment can be executed to be retroactively effective as of October 31, 2022, the parties agree that if the Lease is deemed to no longer be in effect because the term expired on October 31, 2022, then the Lease is hereby reinstated in accordance with all of its provisions, except as amended as provided in this Amendment. If for any reason it is not legally effective to reinstate the Lease as provided in the preceding sentence, then Lessor, Current Lessee and Assignee agree that a new lease between them is hereby established containing all of the provisions set forth in the Lease, except as amended in this Amendment. For this purpose, the provisions set forth in the Lease are hereby incorporated in full herein, with the same force and effect as if such provisions were set forth in their entirety herein, subject to amendment as provided herein.

8. This Amendment may be executed in two or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. It shall not be necessary that any single counterpart be executed by all parties hereto, provided that each party shall have executed and delivered at least one counterpart. This Amendment contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior letters of intent, term sheets, proposals, and all other agreements, written or oral, with respect to such subject matter. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, that nothing in this sentence shall be construed to permit any assignment by the Lessee except in accordance with the provisions of the Amended Lease, and no assignee of the Lessee shall have any rights hereunder unless the assignment to such assignee is accomplished in accordance with the provisions of the Amended Lease.

9. The provisions of Paragraphs 1, 2, 3 and 5 of this Amendment are effective only as of the Completion Date (and are not in effect prior to the Completion Date). If for any reason the Completion Date does not occur by February 17, 2023, then at the election of Lessor, the provisions of Paragraphs 1, 2, 3, 5 and 6 of this Amendment shall thereafter be null and void.

Delivery of any signature (whether handwritten, facsimile stamp, electronic or otherwise) on this document shall be as fully effective as delivery of an original signature in person.

[signatures on next page]

EXECUTED under seal this 12th day of January, 2023.

LESSOR:

TRINITY REALTY II, LLC

By: John DiGiovanni
John P. DiGiovanni, Manager, hereunto duly
authorized

CURRENT LESSEE:

ELIOT STREET DONUTS, INC.

By: _____
Duarte M. Carvalho, President, hereunto duly
authorized

CURRENT GUARANTOR:

Duarte M. Carvalho, Individually

ASSIGNEE:

BEANTOWN DONUTS, LLC

By: _____
Mark A. Pesce, Manager, hereunto duly
authorized

NEW GUARANTOR:

Mark A. Pesce, Individually

EXECUTED under seal this 12th day of January, 2023.

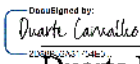
LESSOR:

TRINITY REALTY II, LLC

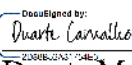
By: _____
John P. DiGiovanni, Manager, hereunto duly
authorized

CURRENT LESSEE:

ELIOT STREET DONUTS, INC.

By:  _____
Duarte M. Carvalho, President, hereunto duly
authorized

CURRENT GUARANTOR:

 _____
Duarte M. Carvalho, Individually

ASSIGNEE:

BEANTOWN DONUTS, LLC

By: _____
Mark A. Pesce, Manager, hereunto duly
authorized

NEW GUARANTOR:

Mark A. Pesce, Individually

EXECUTED under seal this 12th day of January, 2023.

LESSOR:

TRINITY REALTY II, LLC

By: _____
John P. DiGiovanni, Manager, hereunto duly
authorized

CURRENT LESSEE:

ELIOT STREET DONUTS, INC.


By: _____
Duarte M. Carvalho, President, hereunto duly
authorized

CURRENT GUARANTOR:

Duarte M. Carvalho, Individually


ASSIGNEE:

BEANTOWN DONUTS, LLC

By: 

Mark A. Pesce, Manager, hereunto duly
authorized

NEW GUARANTOR:



Mark A. Pesce, Individually

GUARANTY

This Guaranty is attached to the foregoing Fourth Amendment to Lease, Consent to Assignment, and Assumption Agreement (the "Amendment"), and any capitalized term used herein that is not defined herein shall have the meaning ascribed to such term in the Amendment. The Lease, as amended by the Amendment, is referred to herein as the "Amended Lease". The undersigned hereby requests Lessor to enter into the Amendment, and as an inducement to Lessor to do so, and as additional consideration therefor, the undersigned hereby (a) guarantees unconditionally to the Lessor the full, faithful, and punctual performance, fulfillment and observance of all of the obligations and liabilities of the Lessee under the Amended Lease (as the same may be further amended or otherwise modified hereafter), and all other obligations and liabilities of the Lessee to the Lessor, except that the undersigned does not guarantee those obligations and liabilities of the Lessee under the Lease that were or are (according to the Lease) to be performed prior to the Completion Date; (b) waives notice of and consents to any and all amendments, extensions and renewals of the Amended Lease, and any and all assignments, subleases and other actions that may be permitted thereunder by the Lessee or the Lessor, any and all other amendments, extensions and renewals, any and all advances, extensions, settlements, compromises, favors and indulgences, any and all receipts, substitutions, additions, and releases of persons primarily or secondarily liable, and any and all acceptances by the Lessor of negotiable instruments, commercial paper and other property, and agrees that none of the foregoing, should there be any, shall discharge or limit in any way the liability of the undersigned hereunder; (c) agrees that all rights and remedies of the Lessor under the Amended Lease and hereunder shall survive any discharge, moratorium or other relief granted any person primarily or secondarily liable in any proceeding under federal or state law relating to bankruptcy, insolvency or the relief or rehabilitation of debtors, and any consent by the Lessor to, or participation by the Lessor in the proceeds of, any assignment, trust or mortgage for the benefit of creditors, or any composition or arrangement of debts, any of which may be made without the undersigned being discharged or affected in any way thereby; (d) waives any right to require marshalling or exhaustion of any right or remedy against any person, collateral or other property; and (e) waives presentment, demand, protest and notice of default, nonpayment and protest and all demands, notices and suretyship defenses generally. The undersigned represents and warrants to Lessor that all financial information delivered to Lessor concerning the undersigned is true and accurate. This Guaranty shall be binding upon the undersigned and the heirs, legal representatives, successors and assigns of the undersigned, and shall inure to the benefit of Lessor and Lessor's successors and assigns.

EXECUTED under seal this 12th day of January, 2023.



Mark A. Pesce

3273114.1 07333.002

Mark Pesce

299 Simon Willard Road

Concord, MA 01742

Attachment B

To Whom This May Concern:

My family opened its first Dunkin' in January of 1988, in the city of West Medford. As a high school and college student I worked daily in the business in all facets. From waiting on customers, and cutting donuts, making muffins and baked goods to help manage the location. My family built 4 other locations in Winchester and Woburn over the next 10 years.

In 1995, I moved to Orlando, Florida to be the Director of Operations of five Dunkin locations. I oversaw the operations of the 5 locations, the commissary kitchen that supplied 30 cafeterias to Disney, and was the bookkeeper for all billing.

In 1997, I was hired at Dunkin' corporate as a Business Consultant. I oversaw the relationship with hundreds of Dunkin's and Franchisee's. I supported their business through sales building tactics, people systems and business planning. Also supported new store openings and development.

In 2003, I joined 2 partners and open my first franchise in Concord, MA. Over the next 16 years my 2 partners and I developed 60 Dunkin' locations, 25 stores in Pennsylvania, 25 in Maine and 10 in Massachusetts. We also developed our real estate portfolio and purchased many of the locations.

In 2019, I purchased the 10 Massachusetts locations from my partners, and they purchased my ownership in Maine and Pennsylvania. By January of 2023 we will have over 40 locations. Today my wife Megan and I oversee our own company of Dunkin' Franchises and Commercial Real Estate portfolio. We take great pride in the operations of our restaurants and believe very deeply in the connection and partnerships with every community we do business. We partner with schools, local sports, business partnerships and many other local organizations. We have two boys Andrew 18 and Jack 15. Both work part time at the stores and play hockey and lacrosse in their high schools.

Further I sit on the New England Advertising committee and member of the Profitability Committee for Dunkin'. We are an incredibly hard-working family and passionate about Dunkin and our communities. Please email me at markpesce@gmail.com for any further information.

Sincerely,



Mark Pesce

MM&C

Marcovich, Mansour & Capobianco, LLC

CERTIFIED PUBLIC ACCOUNTANTS

February 3, 2023

To whom it may concern:

I am writing regarding my client and friend Mark Pesce of Concord, Massachusetts. I have been acquainted with Mark and his wife Megan for over four years. I currently serve as their accountant, both personally and for their businesses.

I have had the pleasure of seeing Mark grow his business organization to a network of almost 40 Dunkin' franchises, as well as an independently owned and operated general store and various real estate holdings. Mark is well known and respected in the Dunkin' franchise community, having worked in the business for over 30 years. In 2010, he and his former partners were named Dunkin' Donuts Operators of the Year at the Dunkin' Brands Franchisee & Enterprise Awards ceremony.

What sets Mark apart from the other Dunkin' franchisees that I am acquainted with (my firm represents over 700 Dunkin' units, owned by 45 individual franchise groups) is his passion for the business and his hands on approach to the operation of his network. Mark frequents his stores regularly and in a recent tour that I took with him to 7 of his store locations, I was amazed as to how he personally knew the name of each employee behind the counter. Mark's stores were all clean and well-run, and it is evident that his employees obviously share in his passion for the business, and respect his leadership.

The majority of Mark and Megan's franchise locations are walk-in locations, and do not have drive-thrus. This means that cleanliness and customer service demand even more attention, as there is greater face to face contact with the customer. Non-drive thru Dunkin' franchise locations, which represent the majority of Mark's locations, were particularly challenged during the height of the COVID 19 pandemic throughout most of 2000 and 2001, and Mark creatively found ways to keep his doors open, and his workers and customers healthy and safe.

Mark is unique in that he is not only an accomplished and successful, hands on operator, but also is an entrepreneur. He is knowledgeable at all times about the finances as it relates to his organization, and he also plays the lead role in his network when it comes to development, remodels, and acquisitions. In the time that Mark and I have been acquainted, he has successfully completed 5 network acquisitions, an amazing feat, particularly during these challenging times.

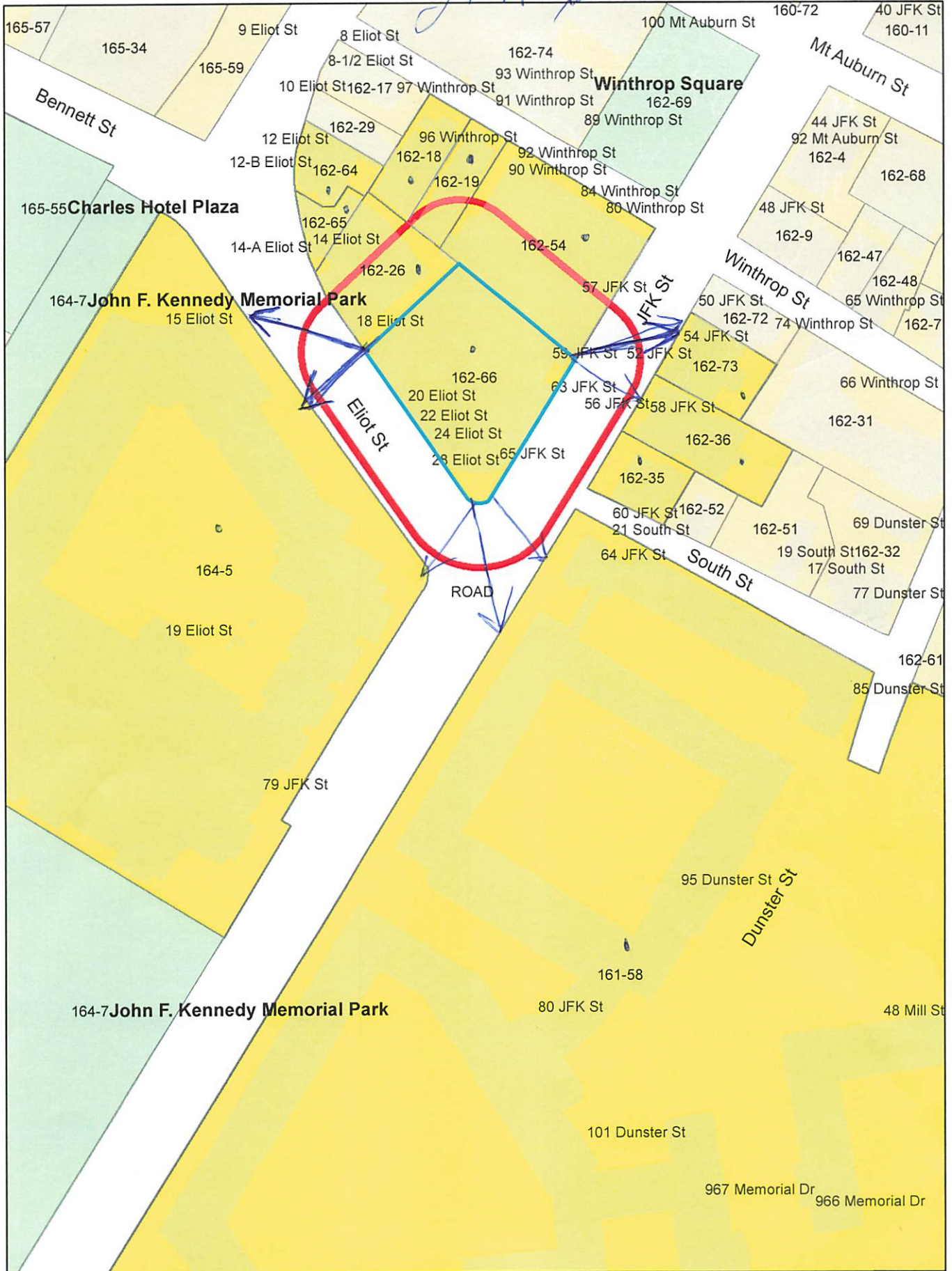
The Pesce's are extremely charitable, and they support the local communities and organizations in which their shops are located, from little league teams and the local food pantries, to larger charities such as the Jimmy Fund. In his spare time, Mark is an avid sports memorabilia collector, a passion which both he and I share.

I am proud to have Mark and Megan Pesce as clients, business associates, and friends.



Joseph A. Mansour, Jr.
Managing Partner

65 JFK St.



65 JFK St.

Petitioner

162-19
RAJ & RAJ LLC, NEENA'S DESIGN LIGHTING, LTD
C/O RAJ DHANDA
166 HARVARD ST
BROOKLINE, MA 02446

162-26
CHARLES RIVER HOLDINGS LLC,
166 HARVARD ST
BROOKLINE, MA 02446

BEANTOWN DONUTS LLC
C/O MARK PESCE
72 JUNCTION SQUARE DRIVE
CONCORD, MA 01742

162-35 / 161-58 / 164-5
PRESIDENT & FELLOWS OF HARVARD COLLEGE
C/O HARVARD REAL ESTATE, INC.
HOLYOKE CENTER, ROOM 1000
1350 MASSACHUSETTS AVE
CAMBRIDGE, MA 02138-3895

162-54
CRIMSON GALERIA LIMITED PARTNERSHIP
C/O RAJ DHANDA
1299 BEACON STREET
BROOKLINE, MA 02446

BRIDGET SWEET
279 EAST CENTRAL STREET – SUITE 252
FRANKLIN, MA 02038

162-66
DI GIOVANNI, LOUIS F.
TRUSTEE OF KENNEDY AND ELIOT REALTY TRUST
P.O. BOX 380212
CAMBRIDGE, MA 02238

162-18
TIMBUKTU REAL ESTATE LLC
10 ELIOT ST
CAMBRIDGE, MA 02138

162-36
TIMBURA, LLC
PO BOX 590179
CAMBRIDGE, MA 02138

162-73
HARVARD SQUARE HOLDINGS LLC.
166 HARVARD ST
BROOKLINE, MA 02446

162-64-65
THE R B FAMILY LIMITED PARTNERSHIP
C/O THE BANKER REAL ESTATE COMP.
14A ELIOT ST
CAMBRIDGE, MA 02138



City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

2 Bds

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

Name: Richard Vincent Date: 8/25/22
(Print)

Address: 65 JFK St.

Case No. BZA-226790

Hearing Date: 9/14/23

Thank you,
Bza Members