

City of Cambridge

MASSACHUSETTS

Agenda # 18 - Agreement with the City of
Cambridge and the CambridgeSide Galleria Association City Council Sept. 10 1990
For the purpose of maintaining an area for outdoor food service at the
CambridgeSide Galleria.

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	✓				
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mr. Kenneth E. Reeves	✓				
Mrs. Sheila T. Russell	✓				
Mr. Walter J. Sullivan	✓ ⁽²⁾			✓ ⁽¹⁾	
Mr. Timothy J. Toomey, Jr.	✓				
Mr. William H. Walsh	✓				
Mayor Alice K. Wolf	✓				

9⁽²⁾

0

0⁽²⁾

0



City of Cambridge

AGENDA ITEM # 18

IN CITY COUNCIL

September 10, 1990

COUNCILLOR TOOMEY

ORDERED:

That the City Manager be and hereby is authorized to enter into the attached approved agreement by and between the CambridgeSide Galleria Associates and the City of Cambridge for the purpose of maintaining an area for outside food service at the CambridgeSide Galleria.

Said agreement to include a provision limiting operation of area outside food service to the operational hours of said mall.

In City Council September 10, 1990.

Adopted by a yeas and nays vote:

Yeas 9; Nays 0; Absent 0.

Attest:- John E. Flynn, Deputy City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script, reading "John E. Flynn".

John E. Flynn, Deputy City Clerk.

LICENSE AGREEMENT

This License Agreement is made as of the ___ day of August, 1990, between Stephen R. Karp, Stephen C. Plumeri and William H. McCabe, Jr., as Trustees of CambridgeSide Galleria Associates Trust, formerly known as Riverside Galleria Associates Trust, u/d/t dated as of April 1, 1985, recorded with the Middlesex South District Registry of Deeds ("Recorded") in Book 16089, Page 56, filed with the South Registry District for Middlesex County ("Filed") as Document No. 678867, noted on Certificate of Title No. 173226 in Registration Book 996, Page 76, Certificate of Title No. 179085 in Registration Book 1025, Page 135, Certificate of Title No. 183186 in Registration Book 1046, Page 36, and Certificate of Title No. 185332 in Registration Book 1056, Page 182, as affected by a Certificate of First Amendment of Declaration of Trust Establishing Riverside Galleria Associates Trust, dated May 24, 1988, Recorded in Book 19084, Page 73, and Filed as Document No. 774995, having a mailing address c/o New England Development, One Wells Avenue, Newton, Massachusetts 02159 (which Trust, together with its successors and assigns, is hereinafter referred to as the "Licensee"), and the City of Cambridge, a body politic and corporate and political subdivision of the Commonwealth of Massachusetts, in the County of Middlesex, Commonwealth of Massachusetts (the "City").

Licensee desires to operate, through its tenants or licensees, during the spring, summer and fall months outdoor restaurant and eating facilities adjacent to Licensee's development in the areas (the "Cafe") of Lechmere Canal Park shown with tables and chairs on the plan entitled **CambridgeSide Galleria Cafe Plan, dated August 24, 1990**, a copy of which is attached hereto and hereby incorporated herein as Exhibit A (the "Plan"). The City desires Licensee or its tenants or licensees to operate the Cafe.

In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Appointment. The City hereby grants to Licensee a license to operate the Cafe on the terms and conditions set forth herein.
2. Acceptance of Appointment. Licensee accepts such appointment and agrees to perform or cause to be performed the duties set forth herein.
3. Term. This License Agreement shall be effective as of the date first written above and shall continue in full force and effect from year to year unless terminated by either party giving one year's written notice to the other, unless earlier terminated pursuant to paragraph 12. Termination under this paragraph 3 may be with or without cause.
4. Duties.
 - (a) General. During the months beginning in April through and including October of each year (the "Months of Operation"), Licensee will itself or will cause its tenants or licensees to operate and manage the

Cafe as an outdoor sidewalk seating area with the highest standards of quality, service and cleanliness.

(b) Tables and Chairs. During the Months of Operation, Licensee or its tenants or licensees will provide, at its or their sole cost and expense, tables and chairs for the Cafe which will seat a maximum of 72 patrons. At the end of October of each year, Licensee or its tenants or licensees will remove and store, at its or their sole cost and expense, such tables and chairs. Such table and chairs shall be arranged generally as designated on the Plan.

(c) Supplies. Licensee or its tenants or licensees will provide, at its or their sole cost and expense, all supplies, accessories, plantings and signs necessary to decorate and operate the Cafe.

(d) Daily Supervision. Licensee will provide or cause to be provided daily supervision of the Cafe and daily litter control and upkeep of the Cafe, the tables and chairs and equipment associated with the Cafe and the surrounding area as shown within the "Line of Maintenance Area" on the Plan (the "Maintenance Area"), including, without limitation, the sanitary disposal off-site of the trash deposited in trash barrels in the Maintenance Area. Licensee will be responsible for ensuring that the Cafe is not used for any illegal purpose, and is not used for any purposes, business, function, activity, or use contrary to this License Agreement to which the City objects in writing. Licensee will be responsible for maintaining the tables, chairs, planters and other equipment in the Maintenance Area in clean, orderly and sanitary condition and good condition and repair satisfactory to the City. Licensee and its tenants and licensees shall have the right to use lawful means to eject persons from the Cafe whose behavior is disruptive, destructive or unlawful but neither Licensee nor its tenants or licensees shall be entitled to eject any person merely because such person is not a customer of Licensee, its tenants or licensees. Licensee shall install additional trash barrels at such locations in the Maintenance Area, in such numbers and of such design as the City shall approve in advance, and Licensee or its tenants or licensees shall provide for the sanitary disposal off-site of the trash therein as provided above.

(e) Supervision of Storage. Licensee or its tenants or licensees will arrange for and supervise a storage area or areas to insure proper maintenance and storing of the tables and chairs.

(f) Personnel and Equipment. Licensee or its tenants or licensees will supply all personnel and equipment necessary for the proper supervision and operation of the Cafe.

(g) Compliance with the License; Laws; Permits. Licensee will operate and maintain or cause to be operated and maintained the Cafe in strict compliance with all applicable laws, ordinances, regulations, other licenses and other equipments of any federal, state, county, municipal, or other governmental agency.

5. Fees and Expenses. The City will not pay any expenses of the Cafe. In addition, the City reserves the right at any time in the future, upon one year's prior written notice to Licensee, to impose a commercially reasonable fee on Licensee for use of the Cafe, and Licensee agrees to pay such fee, in such amounts and at such times as provided in such notice or notices to Licensee.

6. Responsibilities of the City. The City will cooperate with Licensee in its efforts to operate and manage the Cafe in accordance with this Agreement, but such cooperation shall not impose cost obligations on the City other than those that would exist if the Cafe were not in operation.

7. Inspection. The City shall, following reasonable advance notice, have the right to inspect the Cafe, confer with Licensee, and inspect and check exterior furnishings, fixtures, and operating methods.

8. Insurance. Licensee shall procure and maintain in full force and effect an insurance policy or policies protecting Licensee and the City and its employees, contractors and agents against any loss, liability, or expense whatsoever arising from or occurring upon or in connection with the Cafe or by reason of the operation of the Cafe, ### as follows:

Licensee shall carry or require that there be carried Workers' Compensation Insurance for all employees and those of its agents, contractors and/or subcontractors engaged in work at the Cafe, in accordance with the State Workers' Compensation Laws; Licensee shall carry or require that there be carried Comprehensive Public Liability Insurance with limits of One Million Dollars (\$1,000,000) for injury or death to one (1) person, and Two Million Dollars (\$2,000,000) for injury or death to more than one (1) person in a single accident. If such limits are not commercially available at reasonable cost to Licensee, such insurance may be maintained at such lower limits that are commercially available at reasonable cost; provided, however, Licensee shall notify the City in advance of the effective date of any such lower limits. The City shall be named as an "additional insured" in all policies for such insurance and Licensee shall furnish a certificate of insurance to the City prior to the operation of the Cafe for any activities authorized under this License Agreement. Where such insurance is renewed or replaced, Licensee shall furnish the City a certificate of insurance evidencing the same.

9. Liability of the City. Except for its own negligence or that of its agents, contractors or employees (each, a "City Tort"), the City shall not be liable to Licensee or to any other person for any loss or damage. Specifically, but without limiting the generality of the foregoing, unless the same results from a City Tort, (a) the City shall have no liability for any loss or damage due to personal injury, property damage, libel, or slander experienced by the Licensee in connection with the Cafe for any reason whatsoever and (b) the City shall have no responsibility or liability for any furniture, equipment or plants placed in the Cafe by the Licensee or any person acting under the direction of the Licensee.

10. Indemnification. Except if the same were caused by the negligence by one or any of the Indemnitees (hereinafter defined), Licensee will save the City and its employees, contractors and agents (collectively referred to as the "Indemnitees") harmless and will exonerate and indemnify the Indemnitees from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Cafe arising out of the use or operation of the Cafe by Licensee or by any person claiming by, through or under Licensee (including, without limitation, all patrons, employees and customers of Licensee) **or on account of or based upon anything whatsoever done on the Cafe.** Licensee shall indemnify the Indemnitees from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against the Indemnitees by reason of any such claim, Licensee, upon notice from the Indemnitees and at Licensee's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Indemnitees.

11. Assignment. The interest of Licensee under this License Agreement may be assigned, subcontracted, transferred, shared, or divided (each, an "Assignment") in any manner by Licensee provided, however, no such Assignment shall affect or limit the rights and obligations of the Licensee hereunder.

12. Early Termination. If Licensee shall fail to comply with any lawful term, condition, covenant, obligation, or agreement expressed herein (and such failure continues for 25 days after written notice thereof from the City to Licensee, or if such failure cannot reasonably be expected to be cured within said 25-day period, such cure is not commenced within said 25 days and diligently prosecuted to completion thereafter) or if Licensee shall be declared bankrupt or insolvent according to law or if the Cafe is abandoned during the Months of Operation, then, in any of said cases, the City may immediately terminate this License Agreement upon written notice to Licensee. The Licensee may terminate this License Agreement at any time within the ninety (90) day notice period referred to in numbered paragraph 5 hereof if the City exercises its right to impose a fee on the Licensee for use of the Cafe provided the Licensee gives notice to the City of its election so to terminate.

13. Notices. All notices given hereunder shall be in writing and hand delivered or mailed postage prepaid, certified mail, return receipt requested, addressed or delivered, in the case of the City to:

City Manager
City Hall
Cambridge, MA 02139

with a copy to:

Community Development Department
City Hall Annex
57 Inman Street
Cambridge, MA 02139
Attn: Economic Development Director

and in the case of Licensee to:

Stephen R. Karp, Trustee
c/o New England Development
One Wells Avenue, Newton, MA 02159

with a copy to

Steven S. Fischman, Esq. or Thomas P. Bloch, Esq.
Goulston & Storrs, P.C.,
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

and

Aetna Law Department
CityPlace YFFI
Hartford, Connecticut 06156
Attention: Sydney A. Keyles, Esq.

or to such other address as to which notice has been given in the same manner.

14. Entire Agreement. This License Agreement contains the entire agreement of the parties and no representation, inducement, promise, or agreement, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement under seal as of this ____ day of August, 1990.

Approved as to form:

CITY OF CAMBRIDGE

Russell B. Higley,
City Solicitor

By: _____
Robert W. Healy
Its City Manager

[Licensor]

(Signatures continued on next page)

CAMBRIDGESIDE GALLERIA ASSOCIATES
TRUST

By: _____
Stephen R. Karp, as Trustee
and not individually

By: _____
Stephen C. Plumeri, as Trustee
and not individually

By: _____
William H. McCabe, Jr., as
Trustee and not individually

[Licensee]

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

August __, 1990

Then personally appeared the above-named Robert W. Healy, known to me to be the City Manager of the City of Cambridge, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Cambridge, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen R. Karp, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen C. Plumeri, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

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COMMONWEALTH OF MASSACHUSETTS

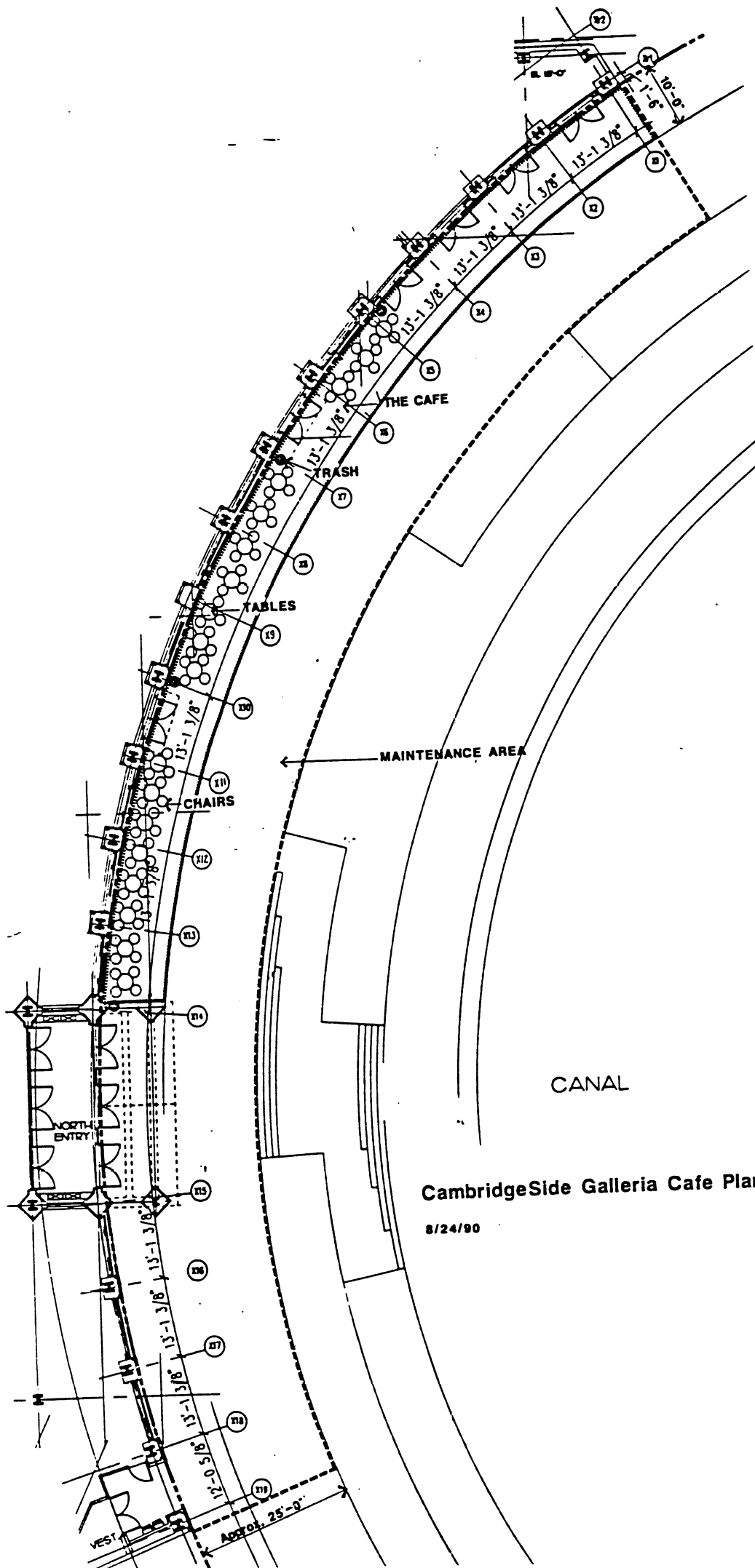
_____, ss.

August __, 1990

Then personally appeared the above-named William H. McCabe, Jr., Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____



CambridgeSide Galleria Cafe Plan

8/24/90



City of Cambridge

AGENDA ITEM # 18

IN CITY COUNCIL

September 10, 1990

COUNCILLOR TOOMEY

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Said agreement to include a provision limiting operation of area outside food service to the operational hours of said mall.

In City Council September 10, 1990.

Adopted by a yea and nay vote:

Yeas 9; Nays 0; Absent 0.

Attest:- John E. Flynn, Deputy City Clerk.

A true copy;

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(g) Compliance with the License; Laws; Permits. Licensee will operate and maintain or cause to be operated and maintained the Cafe in strict compliance with all applicable laws, ordinances, regulations, other licenses and other equipments of any federal, state, county, municipal, or other governmental agency.

5. Fees and Expenses. The City will not pay any expenses of the Cafe. In addition, the City reserves the right at any time in the future, upon one year's prior written notice to Licensee, to impose a commercially reasonable fee on Licensee for use of the Cafe, and Licensee agrees to pay such fee, in such amounts and at such times as provided in such notice or notices to Licensee.

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9. Liability of the City. Except for its own negligence or that of its agents, contractors or employees (each, a "City Tort"), the City shall not be liable to Licensee or to any other person for any loss or damage. Specifically, but without limiting the generality of the foregoing, unless the same results from a City Tort, (a) the City shall have no liability for any loss or damage due to personal injury, property damage, libel, or slander experienced by the Licensee in connection with the Cafe for any reason whatsoever and (b) the City shall have no responsibility or liability for any furniture, equipment or plants placed in the Cafe by the Licensee or any person acting under the direction of the Licensee.

10. Indemnification. Except if the same were caused by the negligence by one or any of the Indemnitees (hereinafter defined), Licensee will save the City and its employees, contractors and agents (collectively referred to as the "Indemnitees") harmless and will exonerate and indemnify the Indemnitees from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Cafe arising out of the use or operation of the Cafe by Licensee or by any person claiming by, through or under Licensee (including, without limitation, all patrons, employees and customers of Licensee) **or on account of or based upon anything whatsoever done on the Cafe.** Licensee shall indemnify the Indemnitees from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against the Indemnitees by reason of any such claim, Licensee, upon notice from the Indemnitees and at Licensee's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Indemnitees.

11. Assignment. The interest of Licensee under this License Agreement may be assigned, subcontracted, transferred, shared, or divided (each, an "Assignment") in any manner by Licensee provided, however, no such Assignment shall affect or limit the rights and obligations of the Licensee hereunder.

12. Early Termination. If Licensee shall fail to comply with any lawful term, condition, covenant, obligation, or agreement expressed herein (and such failure continues for 25 days after written notice thereof from the City to Licensee, or if such failure cannot reasonably be expected to be cured within said 25-day period, such cure is not commenced within said 25 days and diligently prosecuted to completion thereafter) or if Licensee shall be declared bankrupt or insolvent according to law or if the Cafe is abandoned during the Months of Operation, then, in any of said cases, the City may immediately terminate this License Agreement upon written notice to Licensee. The Licensee may terminate this License Agreement at any time within the ninety (90) day notice period referred to in numbered paragraph 5 hereof if the City exercises its right to impose a fee on the Licensee for use of the Cafe provided the Licensee gives notice to the City of its election so to terminate.

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City Manager
City Hall
Cambridge, MA 02139

with a copy to:

Community Development Department
City Hall Annex
57 Inman Street
Cambridge, MA 02139
Attn: Economic Development Director

and in the case of Licensee to:

Stephen R. Karp, Trustee
c/o New England Development
One Wells Avenue, Newton, MA 02159

with a copy to

Steven S. Fischman, Esq. or Thomas P. Bloch, Esq.
Goulston & Storrs, P.C.,
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

and

Aetna Law Department
CityPlace YFFI
Hartford, Connecticut 06156
Attention: Sydney A. Keyles, Esq.

or to such other address as to which notice has been given in the same manner.

14. Entire Agreement. This License Agreement contains the entire agreement of the parties and no representation, inducement, promise, or agreement, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement under seal as of this ____ day of August, 1990.

Approved as to form:

CITY OF CAMBRIDGE

Russell B. Higley,
City Solicitor

By: _____
Robert W. Healy
Its City Manager

[Licensor]

(Signatures continued on next page)

CAMBRIDGESIDE GALLERIA ASSOCIATES
TRUST

By: _____
Stephen R. Karp, as Trustee
and not individually

By: _____
Stephen C. Plumeri, as Trustee
and not individually

By: _____
William H. McCabe, Jr., as
Trustee and not individually

[Licensee]

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

August __, 1990

Then personally appeared the above-named Robert W. Healy, known to me to be the City Manager of the City of Cambridge, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Cambridge, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

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Notary Public

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_____, ss.

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City of Cambridge

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IN CITY COUNCIL

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In City Council September 10, 1990.

Adopted by a yeas and nays vote:

Yeas 9; Nays 0; Absent 0.

Attest:- John E. Flynn, Deputy City Clerk.

A true copy;

ATTEST:-

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 - (a) General. During the months beginning in April through and including October of each year (the "Months of Operation"), Licensee will itself or will cause its tenants or licensees to operate and manage the

Cafe as an outdoor sidewalk seating area with the highest standards of quality, service and cleanliness.

(b) Tables and Chairs. During the Months of Operation, Licensee or its tenants or licensees will provide, at its or their sole cost and expense, tables and chairs for the Cafe which will seat a maximum of 72 patrons. At the end of October of each year, Licensee or its tenants or licensees will remove and store, at its or their sole cost and expense, such tables and chairs. Such table and chairs shall be arranged generally as designated on the Plan.

(c) Supplies. Licensee or its tenants or licensees will provide, at its or their sole cost and expense, all supplies, accessories, plantings and signs necessary to decorate and operate the Cafe.

(d) Daily Supervision. Licensee will provide or cause to be provided daily supervision of the Cafe and daily litter control and upkeep of the Cafe, the tables and chairs and equipment associated with the Cafe and the surrounding area as shown within the "Line of Maintenance Area" on the Plan (the "Maintenance Area"), including, without limitation, the sanitary disposal off-site of the trash deposited in trash barrels in the Maintenance Area. Licensee will be responsible for ensuring that the Cafe is not used for any illegal purpose, and is not used for any purposes, business, function, activity, or use contrary to this License Agreement to which the City objects in writing. Licensee will be responsible for maintaining the tables, chairs, planters and other equipment in the Maintenance Area in clean, orderly and sanitary condition and good condition and repair satisfactory to the City. Licensee and its tenants and licensees shall have the right to use lawful means to eject persons from the Cafe whose behavior is disruptive, destructive or unlawful but neither Licensee nor its tenants or licensees shall be entitled to eject any person merely because such person is not a customer of Licensee, its tenants or licensees. Licensee shall install additional trash barrels at such locations in the Maintenance Area, in such numbers and of such design as the City shall approve in advance, and Licensee or its tenants or licensees shall provide for the sanitary disposal off-site of the trash therein as provided above.

(e) Supervision of Storage. Licensee or its tenants or licensees will arrange for and supervise a storage area or areas to insure proper maintenance and storing of the tables and chairs.

(f) Personnel and Equipment. Licensee or its tenants or licensees will supply all personnel and equipment necessary for the proper supervision and operation of the Cafe.

(g) Compliance with the License; Laws; Permits. Licensee will operate and maintain or cause to be operated and maintained the Cafe in strict compliance with all applicable laws, ordinances, regulations, other licenses and other equipments of any federal, state, county, municipal, or other governmental agency.

5. Fees and Expenses. The City will not pay any expenses of the Cafe. In addition, the City reserves the right at any time in the future, upon one year's prior written notice to Licensee, to impose a commercially reasonable fee on Licensee for use of the Cafe, and Licensee agrees to pay such fee, in such amounts and at such times as provided in such notice or notices to Licensee.

6. Responsibilities of the City. The City will cooperate with Licensee in its efforts to operate and manage the Cafe in accordance with this Agreement, but such cooperation shall not impose cost obligations on the City other than those that would exist if the Cafe were not in operation.

7. Inspection. The City shall, following reasonable advance notice, have the right to inspect the Cafe, confer with Licensee, and inspect and check exterior furnishings, fixtures, and operating methods.

8. Insurance. Licensee shall procure and maintain in full force and effect an insurance policy or policies protecting Licensee and the City and its employees, contractors and agents against any loss, liability, or expense whatsoever arising from or occurring upon or in connection with the Cafe or by reason of the operation of the Cafe, ### as follows:

Licensee shall carry or require that there be carried Workers' Compensation Insurance for all employees and those of its agents, contractors and/or subcontractors engaged in work at the Cafe, in accordance with the State Workers' Compensation Laws; Licensee shall carry or require that there be carried Comprehensive Public Liability Insurance with limits of One Million Dollars (\$1,000,000) for injury or death to one (1) person, and Two Million Dollars (\$2,000,000) for injury or death to more than one (1) person in a single accident. If such limits are not commercially available at reasonable cost to Licensee, such insurance may be maintained at such lower limits that are commercially available at reasonable cost; provided, however, Licensee shall notify the City in advance of the effective date of any such lower limits. The City shall be named as an "additional insured" in all policies for such insurance and Licensee shall furnish a certificate of insurance to the City prior to the operation of the Cafe for any activities authorized under this License Agreement. Where such insurance is renewed or replaced, Licensee shall furnish the City a certificate of insurance evidencing the same.

9. Liability of the City. Except for its own negligence or that of its agents, contractors or employees (each, a "City Tort"), the City shall not be liable to Licensee or to any other person for any loss or damage. Specifically, but without limiting the generality of the foregoing, unless the same results from a City Tort, (a) the City shall have no liability for any loss or damage due to personal injury, property damage, libel, or slander experienced by the Licensee in connection with the Cafe for any reason whatsoever and (b) the City shall have no responsibility or liability for any furniture, equipment or plants placed in the Cafe by the Licensee or any person acting under the direction of the Licensee.

10. Indemnification. Except if the same were caused by the negligence by one or any of the Indemnitees (hereinafter defined), Licensee will save the City and its employees, contractors and agents (collectively referred to as the "Indemnitees") harmless and will exonerate and indemnify the Indemnitees from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Cafe arising out of the use or operation of the Cafe by Licensee or by any person claiming by, through or under Licensee (including, without limitation, all patrons, employees and customers of Licensee) **or on account of or based upon anything whatsoever done on the Cafe.** Licensee shall indemnify the Indemnitees from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against the Indemnitees by reason of any such claim, Licensee, upon notice from the Indemnitees and at Licensee's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Indemnitees.

11. Assignment. The interest of Licensee under this License Agreement may be assigned, subcontracted, transferred, shared, or divided (each, an "Assignment") in any manner by Licensee provided, however, no such Assignment shall affect or limit the rights and obligations of the Licensee hereunder.

12. Early Termination. If Licensee shall fail to comply with any lawful term, condition, covenant, obligation, or agreement expressed herein (and such failure continues for 25 days after written notice thereof from the City to Licensee, or if such failure cannot reasonably be expected to be cured within said 25-day period, such cure is not commenced within said 25 days and diligently prosecuted to completion thereafter) or if Licensee shall be declared bankrupt or insolvent according to law or if the Cafe is abandoned during the Months of Operation, then, in any of said cases, the City may immediately terminate this License Agreement upon written notice to Licensee. The Licensee may terminate this License Agreement at any time within the ninety (90) day notice period referred to in numbered paragraph 5 hereof if the City exercises its right to impose a fee on the Licensee for use of the Cafe provided the Licensee gives notice to the City of its election so to terminate.

13. Notices. All notices given hereunder shall be in writing and hand delivered or mailed postage prepaid, certified mail, return receipt requested, addressed or delivered, in the case of the City to:

City Manager
City Hall
Cambridge, MA 02139

with a copy to:

Community Development Department
City Hall Annex
57 Inman Street
Cambridge, MA 02139
Attn: Economic Development Director

and in the case of Licensee to:

Stephen R. Karp, Trustee
c/o New England Development
One Wells Avenue, Newton, MA 02159

with a copy to

Steven S. Fischman, Esq. or Thomas P. Bloch, Esq.
Goulston & Storrs, P.C.,
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

and

Aetna Law Department
CityPlace YFFI
Hartford, Connecticut 06156
Attention: Sydney A. Keyles, Esq.

or to such other address as to which notice has been given in the same manner.

14. Entire Agreement. This License Agreement contains the entire agreement of the parties and no representation, inducement, promise, or agreement, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement under seal as of this ____ day of August, 1990.

Approved as to form:

CITY OF CAMBRIDGE

Russell B. Higley,
City Solicitor

By:_____
Robert W. Healy
Its City Manager

[Licensor]

(Signatures continued on next page)

CAMBRIDGESIDE GALLERIA ASSOCIATES
TRUST

By: _____
Stephen R. Karp, as Trustee
and not individually

By: _____
Stephen C. Plumeri, as Trustee
and not individually

By: _____
William H. McCabe, Jr., as
Trustee and not individually

[Licensee]

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

August __, 1990

Then personally appeared the above-named Robert W. Healy, known to me to be the City Manager of the City of Cambridge, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Cambridge, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen R. Karp, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen C. Plumeri, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

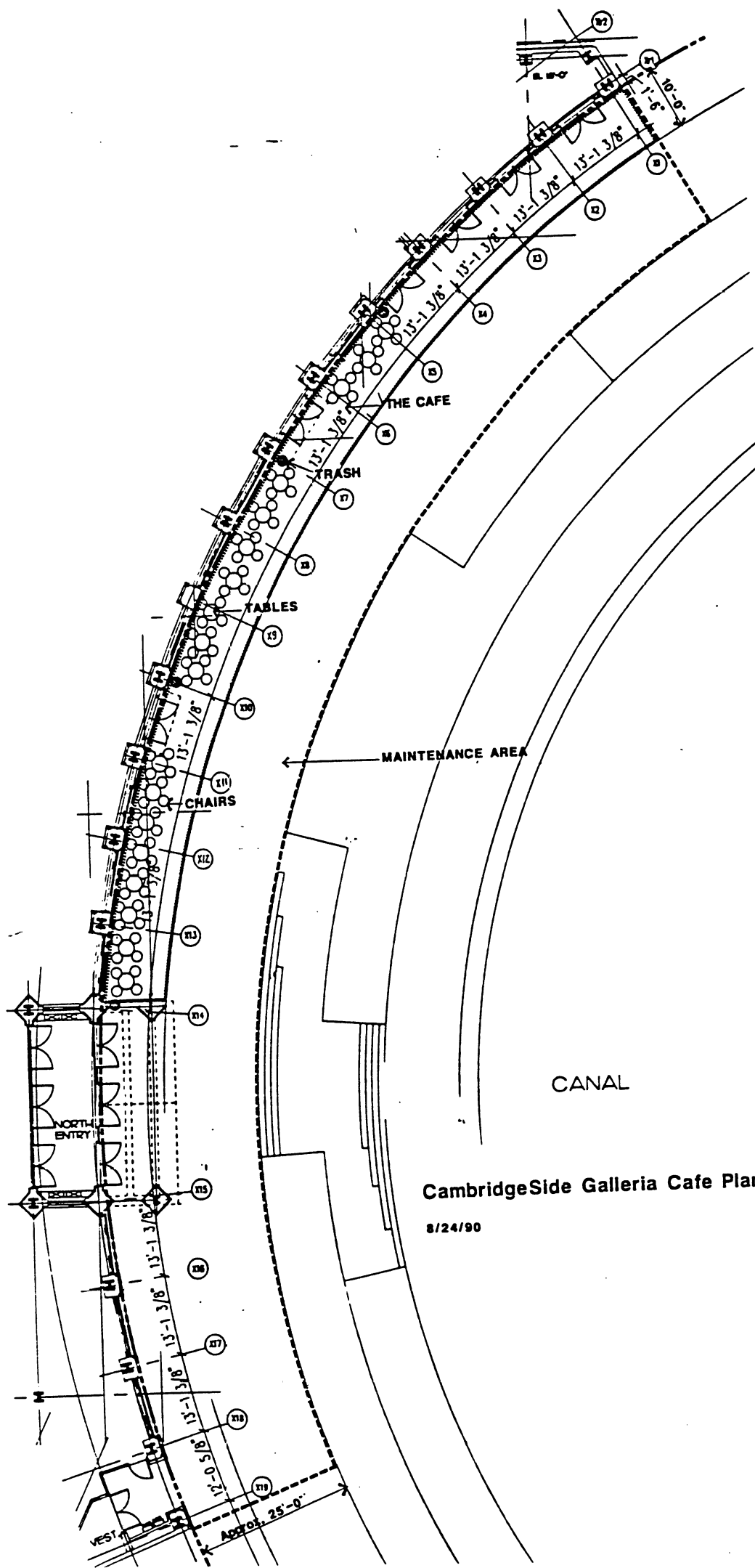
_____, ss.

August __, 1990

Then personally appeared the above-named William H. McCabe, Jr., Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____



CambridgeSide Galleria Cafe Plan
8/24/90



City of Cambridge

AGENDA ITEM # 18

IN CITY COUNCIL

September 10, 1990

COUNCILLOR TOOMEY

ORDERED:

That the City Manager be and hereby is authorized to enter into the attached approved agreement by and between the CambridgeSide Galleria Associates and the City of Cambridge for the purpose of maintaining an area for outside food service at the CambridgeSide Galleria.

Said agreement to include a provision limiting operation of area outside food service to the operational hours of said mall.

In City Council September 10, 1990.

Adopted by a yea and nay vote:

Yeas 9; Nays 0; Absent 0.

Attest:- John E. Flynn, Deputy City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script that reads "John E. Flynn".

John E. Flynn, Deputy City Clerk.

LICENSE AGREEMENT

This License Agreement is made as of the ___ day of August, 1990, between Stephen R. Karp, Stephen C. Plumeri and William H. McCabe, Jr., as Trustees of CambridgeSide Galleria Associates Trust, formerly known as Riverside Galleria Associates Trust, u/d/t dated as of April 1, 1985, recorded with the Middlesex South District Registry of Deeds ("Recorded") in Book 16089, Page 56, filed with the South Registry District for Middlesex County ("Filed") as Document No. 678867, noted on Certificate of Title No. 173226 in Registration Book 996, Page 76, Certificate of Title No. 179085 in Registration Book 1025, Page 135, Certificate of Title No. 183186 in Registration Book 1046, Page 36, and Certificate of Title No. 185332 in Registration Book 1056, Page 182, as affected by a Certificate of First Amendment of Declaration of Trust Establishing Riverside Galleria Associates Trust, dated May 24, 1988, Recorded in Book 19084, Page 73, and Filed as Document No. 774995, having a mailing address c/o New England Development, One Wells Avenue, Newton, Massachusetts 02159 (which Trust, together with its successors and assigns, is hereinafter referred to as the "Licensee"), and the City of Cambridge, a body politic and corporate and political subdivision of the Commonwealth of Massachusetts, in the County of Middlesex, Commonwealth of Massachusetts (the "City").

Licensee desires to operate, through its tenants or licensees, during the spring, summer and fall months outdoor restaurant and eating facilities adjacent to Licensee's development in the areas (the "Cafe") of Lechmere Canal Park shown with tables and chairs on the plan entitled **CambridgeSide Galleria Cafe Plan, dated August 24, 1990**, a copy of which is attached hereto and hereby incorporated herein as Exhibit A (the "Plan"). The City desires Licensee or its tenants or licensees to operate the Cafe.

In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Appointment. The City hereby grants to Licensee a license to operate the Cafe on the terms and conditions set forth herein.
2. Acceptance of Appointment. Licensee accepts such appointment and agrees to perform or cause to be performed the duties set forth herein.
3. Term. This License Agreement shall be effective as of the date first written above and shall continue in full force and effect from year to year unless terminated by either party giving one year's written notice to the other, unless earlier terminated pursuant to paragraph 12. Termination under this paragraph 3 may be with or without cause.
4. Duties.
 - (a) General. During the months beginning in April through and including October of each year (the "Months of Operation"), Licensee will itself or will cause its tenants or licensees to operate and manage the

Cafe as an outdoor sidewalk seating area with the highest standards of quality, service and cleanliness.

(b) Tables and Chairs. During the Months of Operation, Licensee or its tenants or licensees will provide, at its or their sole cost and expense, tables and chairs for the Cafe which will seat a maximum of 72 patrons. At the end of October of each year, Licensee or its tenants or licensees will remove and store, at its or their sole cost and expense, such tables and chairs. Such table and chairs shall be arranged generally as designated on the Plan.

(c) Supplies. Licensee or its tenants or licensees will provide, at its or their sole cost and expense, all supplies, accessories, plantings and signs necessary to decorate and operate the Cafe.

(d) Daily Supervision. Licensee will provide or cause to be provided daily supervision of the Cafe and daily litter control and upkeep of the Cafe, the tables and chairs and equipment associated with the Cafe and the surrounding area as shown within the "Line of Maintenance Area" on the Plan (the "Maintenance Area"), including, without limitation, the sanitary disposal off-site of the trash deposited in trash barrels in the Maintenance Area. Licensee will be responsible for ensuring that the Cafe is not used for any illegal purpose, and is not used for any purposes, business, function, activity, or use contrary to this License Agreement to which the City objects in writing. Licensee will be responsible for maintaining the tables, chairs, planters and other equipment in the Maintenance Area in clean, orderly and sanitary condition and good condition and repair satisfactory to the City. Licensee and its tenants and licensees shall have the right to use lawful means to eject persons from the Cafe whose behavior is disruptive, destructive or unlawful but neither Licensee nor its tenants or licensees shall be entitled to eject any person merely because such person is not a customer of Licensee, its tenants or licensees. Licensee shall install additional trash barrels at such locations in the Maintenance Area, in such numbers and of such design as the City shall approve in advance, and Licensee or its tenants or licensees shall provide for the sanitary disposal off-site of the trash therein as provided above.

(e) Supervision of Storage. Licensee or its tenants or licensees will arrange for and supervise a storage area or areas to insure proper maintenance and storing of the tables and chairs.

(f) Personnel and Equipment. Licensee or its tenants or licensees will supply all personnel and equipment necessary for the proper supervision and operation of the Cafe.

(g) Compliance with the License; Laws; Permits. Licensee will operate and maintain or cause to be operated and maintained the Cafe in strict compliance with all applicable laws, ordinances, regulations, other licenses and other equipments of any federal, state, county, municipal, or other governmental agency.

5. Fees and Expenses. The City will not pay any expenses of the Cafe. In addition, the City reserves the right at any time in the future, upon one year's prior written notice to Licensee, to impose a commercially reasonable fee on Licensee for use of the Cafe, and Licensee agrees to pay such fee, in such amounts and at such times as provided in such notice or notices to Licensee.

6. Responsibilities of the City. The City will cooperate with Licensee in its efforts to operate and manage the Cafe in accordance with this Agreement, but such cooperation shall not impose cost obligations on the City other than those that would exist if the Cafe were not in operation.

7. Inspection. The City shall, following reasonable advance notice, have the right to inspect the Cafe, confer with Licensee, and inspect and check exterior furnishings, fixtures, and operating methods.

8. Insurance. Licensee shall procure and maintain in full force and effect an insurance policy or policies protecting Licensee and the City and its employees, contractors and agents against any loss, liability, or expense whatsoever arising from or occurring upon or in connection with the Cafe or by reason of the operation of the Cafe, ### as follows:

Licensee shall carry or require that there be carried Workers' Compensation Insurance for all employees and those of its agents, contractors and/or subcontractors engaged in work at the Cafe, in accordance with the State Workers' Compensation Laws; Licensee shall carry or require that there be carried Comprehensive Public Liability Insurance with limits of One Million Dollars (\$1,000,000) for injury or death to one (1) person, and Two Million Dollars (\$2,000,000) for injury or death to more than one (1) person in a single accident. If such limits are not commercially available at reasonable cost to Licensee, such insurance may be maintained at such lower limits that are commercially available at reasonable cost; provided, however, Licensee shall notify the City in advance of the effective date of any such lower limits. The City shall be named as an "additional insured" in all policies for such insurance and Licensee shall furnish a certificate of insurance to the City prior to the operation of the Cafe for any activities authorized under this License Agreement. Where such insurance is renewed or replaced, Licensee shall furnish the City a certificate of insurance evidencing the same.

9. Liability of the City. Except for its own negligence or that of its agents, contractors or employees (each, a "City Tort"), the City shall not be liable to Licensee or to any other person for any loss or damage. Specifically, but without limiting the generality of the foregoing, unless the same results from a City Tort, (a) the City shall have no liability for any loss or damage due to personal injury, property damage, libel, or slander experienced by the Licensee in connection with the Cafe for any reason whatsoever and (b) the City shall have no responsibility or liability for any furniture, equipment or plants placed in the Cafe by the Licensee or any person acting under the direction of the Licensee.

10. Indemnification. Except if the same were caused by the negligence by one or any of the Indemnitees (hereinafter defined), Licensee will save the City and its employees, contractors and agents (collectively referred to as the "Indemnitees") harmless and will exonerate and indemnify the Indemnitees from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Cafe arising out of the use or operation of the Cafe by Licensee or by any person claiming by, through or under Licensee (including, without limitation, all patrons, employees and customers of Licensee) **or on account of or based upon anything whatsoever done on the Cafe.** Licensee shall indemnify the Indemnitees from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against the Indemnitees by reason of any such claim, Licensee, upon notice from the Indemnitees and at Licensee's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Indemnitees.

11. Assignment. The interest of Licensee under this License Agreement may be assigned, subcontracted, transferred, shared, or divided (each, an "Assignment") in any manner by Licensee provided, however, no such Assignment shall affect or limit the rights and obligations of the Licensee hereunder.

12. Early Termination. If Licensee shall fail to comply with any lawful term, condition, covenant, obligation, or agreement expressed herein (and such failure continues for 25 days after written notice thereof from the City to Licensee, or if such failure cannot reasonably be expected to be cured within said 25-day period, such cure is not commenced within said 25 days and diligently prosecuted to completion thereafter) or if Licensee shall be declared bankrupt or insolvent according to law or if the Cafe is abandoned during the Months of Operation, then, in any of said cases, the City may immediately terminate this License Agreement upon written notice to Licensee. The Licensee may terminate this License Agreement at any time within the ninety (90) day notice period referred to in numbered paragraph 5 hereof if the City exercises its right to impose a fee on the Licensee for use of the Cafe provided the Licensee gives notice to the City of its election so to terminate.

13. Notices. All notices given hereunder shall be in writing and hand delivered or mailed postage prepaid, certified mail, return receipt requested, addressed or delivered, in the case of the City to:

City Manager
City Hall
Cambridge, MA 02139

with a copy to:

Community Development Department
City Hall Annex
57 Inman Street
Cambridge, MA 02139
Attn: Economic Development Director

and in the case of Licensee to:

Stephen R. Karp, Trustee
c/o New England Development
One Wells Avenue, Newton, MA 02159

with a copy to

Steven S. Fischman, Esq. or Thomas P. Bloch, Esq.
Goulston & Storrs, P.C.,
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

and

Aetna Law Department
CityPlace YFFI
Hartford, Connecticut 06156
Attention: Sydney A. Keyles, Esq.

or to such other address as to which notice has been given in the same manner.

14. Entire Agreement. This License Agreement contains the entire agreement of the parties and no representation, inducement, promise, or agreement, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement under seal as of this ____ day of August, 1990.

Approved as to form:

CITY OF CAMBRIDGE

Russell B. Higley,
City Solicitor

By: _____
Robert W. Healy
Its City Manager

[Licensor]

(Signatures continued on next page)

CAMBRIDGESIDE GALLERIA ASSOCIATES
TRUST

By: _____
Stephen R. Karp, as Trustee
and not individually

By: _____
Stephen C. Plumeri, as Trustee
and not individually

By: _____
William H. McCabe, Jr., as
Trustee and not individually

[Licensee]

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

August __, 1990

Then personally appeared the above-named Robert W. Healy, known to me to be the City Manager of the City of Cambridge, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Cambridge, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen R. Karp, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen C. Plumeri, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named William H. McCabe, Jr., Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____





City of Cambridge

AGENDA ITEM # 18

IN CITY COUNCIL

September 10, 1990

COUNCILLOR TOOMEY

ORDERED: That the City Manager be and hereby is authorized to enter into the attached approved agreement by and between the CambridgeSide Galleria Associates and the City of Cambridge for the purpose of maintaining an area for outside food service at the CambridgeSide Galleria.

Said agreement to include a provision limiting operation of area outside food service to the operational hours of said mall.

In City Council September 10, 1990.

Adopted by a yea and nay vote:

Yeas 9; Nays 0; Absent 0.

Attest:- John E. Flynn, Deputy City Clerk.

A true copy;

ATTEST:-

A handwritten signature in dark ink, appearing to read "John E. Flynn".

John E. Flynn, Deputy City Clerk.

LICENSE AGREEMENT

This License Agreement is made as of the ___ day of August, 1990, between Stephen R. Karp, Stephen C. Plumeri and William H. McCabe, Jr., as Trustees of CambridgeSide Galleria Associates Trust, formerly known as Riverside Galleria Associates Trust, u/d/t dated as of April 1, 1985, recorded with the Middlesex South District Registry of Deeds ("Recorded") in Book 16089, Page 56, filed with the South Registry District for Middlesex County ("Filed") as Document No. 678867, noted on Certificate of Title No. 173226 in Registration Book 996, Page 76, Certificate of Title No. 179085 in Registration Book 1025, Page 135, Certificate of Title No. 183186 in Registration Book 1046, Page 36, and Certificate of Title No. 185332 in Registration Book 1056, Page 182, as affected by a Certificate of First Amendment of Declaration of Trust Establishing Riverside Galleria Associates Trust, dated May 24, 1988, Recorded in Book 19084, Page 73, and Filed as Document No. 774995, having a mailing address c/o New England Development, One Wells Avenue, Newton, Massachusetts 02159 (which Trust, together with its successors and assigns, is hereinafter referred to as the "Licensee"), and the City of Cambridge, a body politic and corporate and political subdivision of the Commonwealth of Massachusetts, in the County of Middlesex, Commonwealth of Massachusetts (the "City").

Licensee desires to operate, through its tenants or licensees, during the spring, summer and fall months outdoor restaurant and eating facilities adjacent to Licensee's development in the areas (the "Cafe") of Lechmere Canal Park shown with tables and chairs on the plan entitled **CambridgeSide Galleria Cafe Plan, dated August 24, 1990**, a copy of which is attached hereto and hereby incorporated herein as Exhibit A (the "Plan"). The City desires Licensee or its tenants or licensees to operate the Cafe.

In consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Appointment. The City hereby grants to Licensee a license to operate the Cafe on the terms and conditions set forth herein.
2. Acceptance of Appointment. Licensee accepts such appointment and agrees to perform or cause to be performed the duties set forth herein.
3. Term. This License Agreement shall be effective as of the date first written above and shall continue in full force and effect from year to year unless terminated by either party giving one year's written notice to the other, unless earlier terminated pursuant to paragraph 12. Termination under this paragraph 3 may be with or without cause.
4. Duties.
 - (a) General. During the months beginning in April through and including October of each year (the "Months of Operation"), Licensee will itself or will cause its tenants or licensees to operate and manage the

Cafe as an outdoor sidewalk seating area with the highest standards of quality, service and cleanliness.

(b) Tables and Chairs. During the Months of Operation, Licensee or its tenants or licensees will provide, at its or their sole cost and expense, tables and chairs for the Cafe which will seat a maximum of 72 patrons. At the end of October of each year, Licensee or its tenants or licensees will remove and store, at its or their sole cost and expense, such tables and chairs. Such table and chairs shall be arranged generally as designated on the Plan.

(c) Supplies. Licensee or its tenants or licensees will provide, at its or their sole cost and expense, all supplies, accessories, plantings and signs necessary to decorate and operate the Cafe.

(d) Daily Supervision. Licensee will provide or cause to be provided daily supervision of the Cafe and daily litter control and upkeep of the Cafe, the tables and chairs and equipment associated with the Cafe and the surrounding area as shown within the "Line of Maintenance Area" on the Plan (the "Maintenance Area"), including, without limitation, the sanitary disposal off-site of the trash deposited in trash barrels in the Maintenance Area. Licensee will be responsible for ensuring that the Cafe is not used for any illegal purpose, and is not used for any purposes, business, function, activity, or use contrary to this License Agreement to which the City objects in writing. Licensee will be responsible for maintaining the tables, chairs, planters and other equipment in the Maintenance Area in clean, orderly and sanitary condition and good condition and repair satisfactory to the City. Licensee and its tenants and licensees shall have the right to use lawful means to eject persons from the Cafe whose behavior is disruptive, destructive or unlawful but neither Licensee nor its tenants or licensees shall be entitled to eject any person merely because such person is not a customer of Licensee, its tenants or licensees. Licensee shall install additional trash barrels at such locations in the Maintenance Area, in such numbers and of such design as the City shall approve in advance, and Licensee or its tenants or licensees shall provide for the sanitary disposal off-site of the trash therein as provided above.

(e) Supervision of Storage. Licensee or its tenants or licensees will arrange for and supervise a storage area or areas to insure proper maintenance and storing of the tables and chairs.

(f) Personnel and Equipment. Licensee or its tenants or licensees will supply all personnel and equipment necessary for the proper supervision and operation of the Cafe.

(g) Compliance with the License; Laws; Permits. Licensee will operate and maintain or cause to be operated and maintained the Cafe in strict compliance with all applicable laws, ordinances, regulations, other licenses and other equipments of any federal, state, county, municipal, or other governmental agency.

5. Fees and Expenses. The City will not pay any expenses of the Cafe. In addition, the City reserves the right at any time in the future, upon one year's prior written notice to Licensee, to impose a commercially reasonable fee on Licensee for use of the Cafe, and Licensee agrees to pay such fee, in such amounts and at such times as provided in such notice or notices to Licensee.

6. Responsibilities of the City. The City will cooperate with Licensee in its efforts to operate and manage the Cafe in accordance with this Agreement, but such cooperation shall not impose cost obligations on the City other than those that would exist if the Cafe were not in operation.

7. Inspection. The City shall, following reasonable advance notice, have the right to inspect the Cafe, confer with Licensee, and inspect and check exterior furnishings, fixtures, and operating methods.

8. Insurance. Licensee shall procure and maintain in full force and effect an insurance policy or policies protecting Licensee and the City and its employees, contractors and agents against any loss, liability, or expense whatsoever arising from or occurring upon or in connection with the Cafe or by reason of the operation of the Cafe, ### as follows:

Licensee shall carry or require that there be carried Workers' Compensation Insurance for all employees and those of its agents, contractors and/or subcontractors engaged in work at the Cafe, in accordance with the State Workers' Compensation Laws; Licensee shall carry or require that there be carried Comprehensive Public Liability Insurance with limits of One Million Dollars (\$1,000,000) for injury or death to one (1) person, and Two Million Dollars (\$2,000,000) for injury or death to more than one (1) person in a single accident. If such limits are not commercially available at reasonable cost to Licensee, such insurance may be maintained at such lower limits that are commercially available at reasonable cost; provided, however, Licensee shall notify the City in advance of the effective date of any such lower limits. The City shall be named as an "additional insured" in all policies for such insurance and Licensee shall furnish a certificate of insurance to the City prior to the operation of the Cafe for any activities authorized under this License Agreement. Where such insurance is renewed or replaced, Licensee shall furnish the City a certificate of insurance evidencing the same.

9. Liability of the City. Except for its own negligence or that of its agents, contractors or employees (each, a "City Tort"), the City shall not be liable to Licensee or to any other person for any loss or damage. Specifically, but without limiting the generality of the foregoing, unless the same results from a City Tort, (a) the City shall have no liability for any loss or damage due to personal injury, property damage, libel, or slander experienced by the Licensee in connection with the Cafe for any reason whatsoever and (b) the City shall have no responsibility or liability for any furniture, equipment or plants placed in the Cafe by the Licensee or any person acting under the direction of the Licensee.

10. Indemnification. Except if the same were caused by the negligence by one or any of the Indemnitees (hereinafter defined), Licensee will save the City and its employees, contractors and agents (collectively referred to as the "Indemnitees") harmless and will exonerate and indemnify the Indemnitees from and against any and all claims, liabilities or penalties asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Cafe arising out of the use or operation of the Cafe by Licensee or by any person claiming by, through or under Licensee (including, without limitation, all patrons, employees and customers of Licensee) **or on account of or based upon anything whatsoever done on the Cafe.** Licensee shall indemnify the Indemnitees from and against all costs, expenses (including reasonable attorneys' fees), and liabilities incurred in or in connection with any such claim, action or proceeding brought thereon; and, in case of any action or proceeding brought against the Indemnitees by reason of any such claim, Licensee, upon notice from the Indemnitees and at Licensee's expense, shall resist or defend such action or proceeding and employ counsel therefor reasonably satisfactory to Indemnitees.

11. Assignment. The interest of Licensee under this License Agreement may be assigned, subcontracted, transferred, shared, or divided (each, an "Assignment") in any manner by Licensee provided, however, no such Assignment shall affect or limit the rights and obligations of the Licensee hereunder.

12. Early Termination. If Licensee shall fail to comply with any lawful term, condition, covenant, obligation, or agreement expressed herein (and such failure continues for 25 days after written notice thereof from the City to Licensee, or if such failure cannot reasonably be expected to be cured within said 25-day period, such cure is not commenced within said 25 days and diligently prosecuted to completion thereafter) or if Licensee shall be declared bankrupt or insolvent according to law or if the Cafe is abandoned during the Months of Operation, then, in any of said cases, the City may immediately terminate this License Agreement upon written notice to Licensee. The Licensee may terminate this License Agreement at any time within the ninety (90) day notice period referred to in numbered paragraph 5 hereof if the City exercises its right to impose a fee on the Licensee for use of the Cafe provided the Licensee gives notice to the City of its election so to terminate.

13. Notices. All notices given hereunder shall be in writing and hand delivered or mailed postage prepaid, certified mail, return receipt requested, addressed or delivered, in the case of the City to:

City Manager
City Hall
Cambridge, MA 02139

with a copy to:

Community Development Department
City Hall Annex
57 Inman Street
Cambridge, MA 02139
Attn: Economic Development Director

and in the case of Licensee to:

Stephen R. Karp, Trustee
c/o New England Development
One Wells Avenue, Newton, MA 02159

with a copy to

Steven S. Fischman, Esq. or Thomas P. Bloch, Esq.
Goulston & Storrs, P.C.,
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

and

Aetna Law Department
CityPlace YFFI
Hartford, Connecticut 06156
Attention: Sydney A. Keyles, Esq.

or to such other address as to which notice has been given in the same manner.

14. Entire Agreement. This License Agreement contains the entire agreement of the parties and no representation, inducement, promise, or agreement, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement under seal as of this ____ day of August, 1990.

Approved as to form:

CITY OF CAMBRIDGE

Russell B. Higley,
City Solicitor

By: _____
Robert W. Healy
Its City Manager

[Licensor]

(Signatures continued on next page)

CAMBRIDGESIDE GALLERIA ASSOCIATES
TRUST

By: _____
Stephen R. Karp, as Trustee
and not individually

By: _____
Stephen C. Plumeri, as Trustee
and not individually

By: _____
William H. McCabe, Jr., as
Trustee and not individually

[Licensee]

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

August __, 1990

Then personally appeared the above-named Robert W. Healy, known to me to be the City Manager of the City of Cambridge, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Cambridge, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen R. Karp, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

August __, 1990

Then personally appeared the above-named Stephen C. Plumeri, Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____

COMMONWEALTH OF MASSACHUSETTS

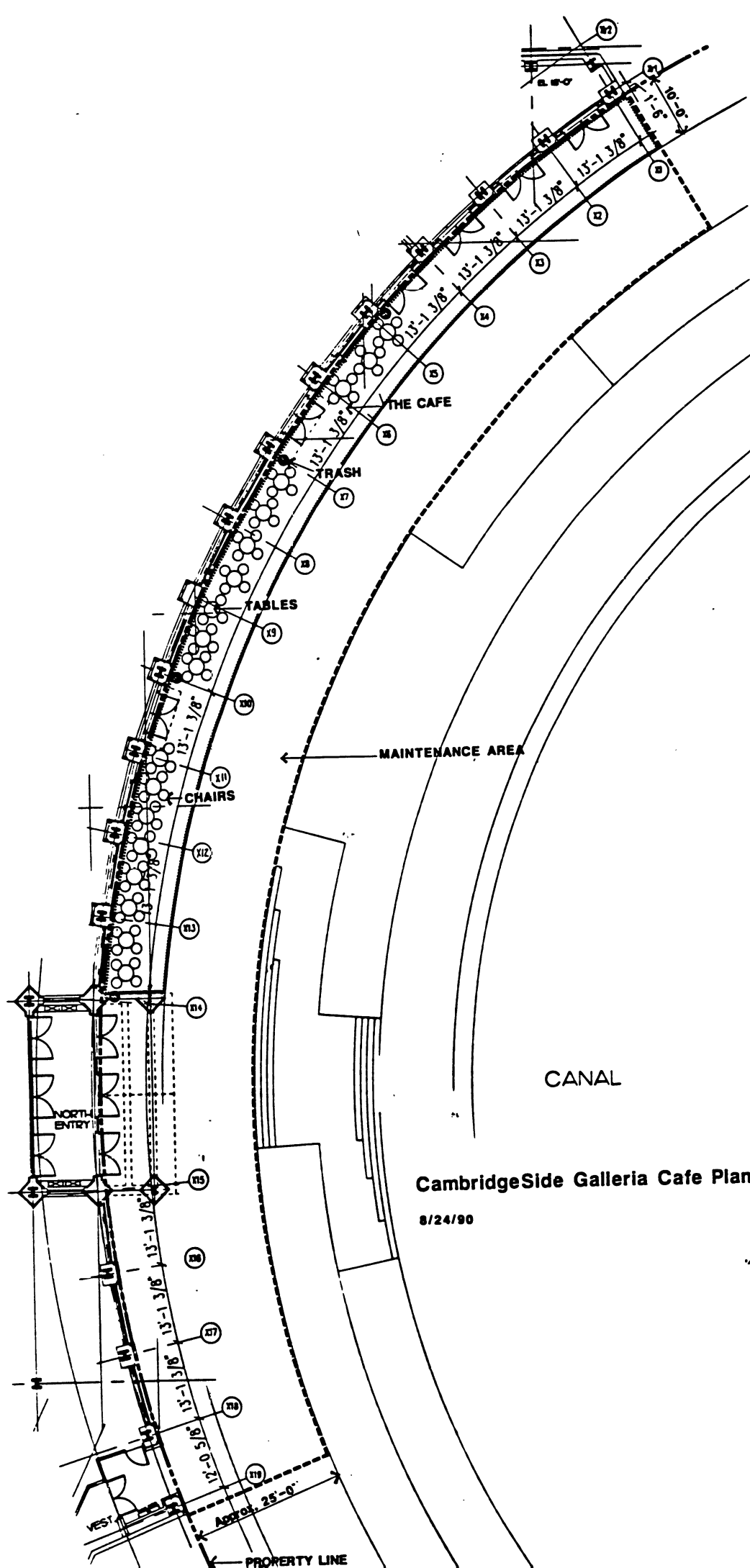
_____, ss.

August __, 1990

Then personally appeared the above-named William H. McCabe, Jr., Trustee of CambridgeSide Galleria Associates Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee, before me.

Notary Public

My Commission Expires:_____



CambridgeSide Galleria Cafe Plan

8/24/80

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CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

September 6, 1990

To the Honorable, the City Council:

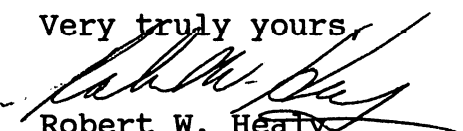
I am recommending the City Council approve a license agreement by and between the CambridgeSide Galleria Associates and the City of Cambridge for the purpose of maintaining an area for outdoor food service at the CambridgeSide Galleria.

The request for this license is in accordance with the urban design plan for the crescent area around the Galleria and the Lechmere Canal. The proposed license agreement is in accordance with the Development Agreement executed between the parties in 1987.

The specific area for the Cafe License Agreement would service up to 72 patrons on the top tier of the crescent adjacent to the North Entry of the Galleria. This area is designated on an attached plan titled "CambridgeSide Galleria Cafe Plan" dated 8/24/90.

The proposed text of the license is attached and has been reviewed by attorneys for both the Developer and the City of Cambridge. The license agreement is initially for one year but would be automatically renewed each year unless either of the parties notifies the other in writing of an intent to amend or terminate the license agreement.

Very truly yours,


Robert W. Healy
City Manager

Agenda # 18

F 456

License Agreement between the City and
CambridgeSide Galleria Associates for the
purpose of maintaining an area for outdoor
food service at the CambridgeSide Galleria.

In City Council,

Sept. 10, 1990

Order adopted
9-0-0