

RESOLUTION NO. R-2022-12

A RESOLUTION MEMORIALIZING A SHARED PARKING AGREEMENT BETWEEN THE OWNER OF THE HEN HOUSE RESTAURANT, THE OWNER OF A NEW RESTAURANT TO BE LOCATED IN THE SAME BUILDING WITH SHARED RESTAURANT FACILITIES AS THE HEN HOUSE RESTAURANT, AND THE OWNER OF THE BUILDING AT 1060 – 1072 COLLEGE AVENUE (THE “PROPERTY”) WHICH HOUSES BOTH RESTAURANTS

WHEREAS, Article 22.2.10 of the City of Wheaton Zoning Ordinance provides for the approval of a Shared Parking Agreement when the parties to the Agreement are entities whose property uses have parking demands which are inconsistent with each other and when the total off-street parking requirements of the parties to the Shared Parking Agreement may exceed the total number of off-street parking spaces available, and

WHEREAS, Article 22.2.10 of the Wheaton Zoning Ordinance further provides that the Shared Parking Agreement shall be subject to the reasonable approval of the City Council and the following conditions are requirements: (i) signed by the owners of each use included in the Agreement, (ii) termination shall require written notice to the non-terminating party or parties and the City Manager, (iii) termination shall not become effective sooner than six (6) months following the date of the written termination notice, and upon termination of any Shared Parking Agreement, the parties and uses thereto shall be subject to all parking requirements provided for in the Zoning Ordinance, and

WHEREAS, the owners of the Hen House restaurant, a 3,194 sf restaurant serving breakfast and lunch located at 1060 College Avenue are seeking to convert 1,979 sf of adjacent space that is currently retail into another restaurant that would be open for dinner exclusively; and

WHEREAS, the two restaurants would share a single kitchen; and

WHEREAS, the building at 1060-1072 College Avenue has 34 off-street parking spaces. The second-floor residential use and remaining retail space has a parking demand of 8 spaces. the existing restaurant has a parking demand of 22 spaces and the proposed restaurant would have a parking demand of 14 spaces; and

WHEREAS, the proposed agreement would memorialize the intent of the restaurant owner in creating two uses that have parking demands which are inconsistent with each other. At any one time, the parking requirements of the Zoning Ordinance would be met.

NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the City Manager is hereby authorized to sign and the City Clerk is hereby directed to attest that the Shared Parking Agreement, attached hereto and incorporated herein as fully set forth, as Exhibit “1” between the City, the owner of the Hen House restaurant, the owner of a new restaurant to be located in the same building with shared restaurant facilities as the Hen House restaurant, and the owner of the building at 1060 – 1072 College Avenue, is hereby approved.

BE IT FURTHER RESOLVED that this Resolution shall be recorded in the office of the DuPage County Recorder at the expense of the owner of the Hen House restaurant, the owner of a new restaurant to be located in the same building with shared restaurant facilities as the Hen House restaurant, and the owner of the building at 1060 – 1072 College Avenue.

ADOPTED the 7th day of February, 2022.

Philip Suess

Mayor

Attest:

Andrea Rosedale

City Clerk

Roll Call Vote

Ayes: Councilwoman Fitch
Councilwoman Robbins
Councilman Weller
Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess

Nays: None

Absent: None

Motion Carried Unanimously

PARCEL 1:

THE EAST 50 FEET OF THE WEST 150 FEET OF LOT 9 IN COUNTY CLERK'S ASSESSMENT DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER AND IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 1890, AS DOCUMENT 43589, IN DuPAGE COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 100 FEET (AS MEASURED ALONG THE SOUTH LINE OF COLLEGE AVENUE) OF LOT 9 IN COUNTY CLERK'S ASSESSMENT DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER AND IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 1890, AS DOCUMENT 43589, IN DuPAGE COUNTY, ILLINOIS.

PARCEL 3:

LOT 14 IN COUNTY CLERK'S ASSESSMENT DIVISION, IN THE WEST HALF OF THE NORTHWEST QUARTER AND IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 29, 1890, AS DOCUMENT 43589, IN DuPAGE COUNTY, ILLINOIS.

1060-1072 College Avenue, Wheaton IL 60187

PIN NOS: 05-15-110-037, 038, 039

Exhibit "1"

SHARED PARKING AGREEMENT BETWEEN THE OWNER OF THE HEN HOUSE RESTAURANT, THE OWNER OF A NEW RESTAURANT TO BE LOCATED IN THE SAME BUILDING WITH SHARED RESTAURANT FACILITIES AS THE HEN HOUSE RESTAURANT, AND THE OWNER OF THE BUILDING AT 1060 – 1072 COLLEGE AVENUE (THE "PROPERTY") WHICH HOUSES BOTH RESTAURANTS

This Shared Parking Agreement is made by and between: The Hen House Restaurant, LLC (hereinafter "Hen House"), the owner of a second restaurant referred to in this Agreement (hereinafter "Restaurant 2"), the owner of the property commonly known as 1060 – 1072 College Avenue (hereinafter "Owner" and/or "Property"), and the City of Wheaton, an Illinois Home Rule Municipality (hereinafter "City").

WHEREAS, Article 22.2.10 of the City of Wheaton Zoning Ordinance provides for the approval of a Shared Parking Agreement when the parties to the Agreement are entities whose property uses have parking demands which are inconsistent with each other and when the total off-street parking requirements of the parties to the Shared Parking Agreement may exceed the total number of off-street parking spaces available; and

WHEREAS, Article 22.2.10 of the Wheaton Zoning Ordinance further provides that the Shared Parking Agreement shall be subject to the reasonable approval of the City Council and comply with the following requirements: (i) signed by the owners of each use included in the Agreement, (ii) termination requires written notice to the non-terminating party or parties and the City Manager, (iii) termination shall not become effective sooner than six (6) months following the date of the written termination notice, and upon termination of any Shared Parking Agreement, the parties and uses thereto shall be subject to all parking requirements provided for in the Zoning Ordinance; and

WHEREAS, the Hen House serves breakfast and lunch only between the hours of 7 am to 2:30 pm; and

WHEREAS, the owners of the Hen House, are seeking to utilize 1,979 feet of space adjacent to the Hen House, but in the same building as the Hen House, and which is currently occupied by a retail use, into another restaurant hereinafter ("Restaurant 2") that would be open exclusively for dinner; and

WHEREAS, the Hen House and Restaurant 2 will be owned by the same LLC and share a single kitchen and some storage at the Property.

WHEREAS, off street parking for the Property has 34 spaces. The second-floor residential use and remaining retail space at the Property has a parking demand of 8 spaces. The Hen House has a parking demand of 22 spaces and the proposed Restaurant 2 would have a parking demand of 14 spaces; and

WHEREAS, the Owner of the Property, 1060 College Wheaton LLC, does not own or operate the Hen House nor will it own or operate the second Restaurant 2; and

WHEREAS, the attached Shared Parking Agreement memorializes the intent of the Property owner, restaurant owner and City in allowing two uses that have parking demands which are not inconsistent with each other, but which would meet the parking requirements of the Zoning Ordinance so long as the Shared Parking Agreement is in place.

NOW, THEREFORE, in consideration of the City's ordinances and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

RECITALS

1. The foregoing recitals are deemed remade and restated herein as if fully set forth and shall be substantive representations, understandings and covenants of this agreement.
2. In order to satisfy the shared parking requirements of the City of Wheaton's ordinances in the operation of two restaurants at the "Property", the parties agree as follows:
 - B. The Hen House shall continue to operate as a breakfast and lunch restaurant only, Monday thru Sunday between the hours of 7 am to 2:30 pm at the Property in an area comprised of 3,194 square feet.
 - B. Restaurant 2 shall be allowed to operate at the Property, for dinner only, in an area comprised of 1,979 square feet; which shall include seating and bathrooms for patrons and staff.
 - C. The Hen House and Restaurant 2 due to their different business hours shall be allowed to share 14 parking spaces, on, in, over and across the surface portion of the Property for patron and employee parking during their respective hours of operation. The shared parking spaces are hereby granted and dedicated for the exclusive benefit and use of the Hen House and Restaurant 2, their successors and assigns, guests, invitees, patrons, agents and employees in accordance with the terms of this agreement,
 - D. The Owner, in consideration of the occupancy of its rental space at the Property, agrees to allow the shared parking in conformance with the terms of this agreement.
 - E. Prior to the opening of Restaurant 2, the parking spaces shall be designated by signs identifying the availability and hours of availability of the parking to patrons and staff of the Hen House and Restaurant 2. The signage shall be subject to the approval of the City of Wheaton's zoning administrator. After the approved signs are installed they shall be maintained in good and readable condition, by the owner of the Hen House and Restaurant 2, its successors and assigns.
 - F. The maintenance and repair of the parking space surfaces described in this agreement shall remain the obligation of the owner in accordance with City ordinances.
 - G. Other than successors and assigns, guests, invitees, agents, employees, and patrons of the restaurants, the shared parking shall not create any rights to the public or constitute a dedication or legal authority or easement for public use.

H. Nothing in this agreement shall place any duty or obligation upon the City to perform maintenance or repair over the shared parking area and any and all statutory privileges and immunities, and common law immunities to the extent they exist for the benefit of the City, shall remain in full force and effect on the Property.

3. **ENFORCEMENT.** This agreement may be enforced either in law or equity by any non-breaching party through injunctive relief or by the City by any legal means. The City's enforcement rights shall not be a duty but in its discretionary determination. The enforcement of the parking restrictions on users of the shared spaces shall be the duty of the Hen House and Restaurant 2. Enforcement shall be conducted diligently to satisfy the intent of the City's shared parking ordinance and this agreement.

4. **AMENDMENT.** This agreement or specific provisions herein may be modified or amended only by written instrument executed by all of the parties, their respective or permitted successors or assigns.

5. **LEGAL EFFECT.** The effectiveness of this agreement shall be subject to the legislative authority of the corporate authorities of the City of Wheaton, except to the extent that any amendment to shared parking provisions of the City ordinance which in any way repeals, reduces or limits the extent of the shared parking authorization shall not become effective until six (6) months after the adoption of the amendment unless the amendment is the result of an attempt to protect against immediate threats of bodily injury or property damage.

6. **CONSTRUCTION.** The rule of strict construction does not apply to this agreement. It shall be given reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment for the beneficiaries is carried out. For purposes of this agreement, the beneficiaries shall mean the Hen House, Restaurant 2, the owners of the Property and the City of Wheaton, their successors and assigns. Any inconsistency between this Agreement and the City shared parking ordinances shall be controlled by this Agreement. There are no third-person beneficiaries of this agreement.

7. **REMEDIES.** Except as otherwise provided in this agreement, any party shall be given twenty (20) days to cure an event of default, except in case of life-threatening emergency by which the non-defaulting party may seek an immediate injunction restraining order or other court order with or without notice as the court allows and without having to wait for the grace period to expire. All notices or other communications required hereunder shall be in writing and considered delivered:

- A. 72 hours after postmark 1st Class; United States Mail; or
- B. 24 hours after delivery by Commercial overnight courier service; or
- C. 24 hours of facsimile or e-transmission accompanied by a copy of the notice mailed by First Class Mail,

8. **AUTHORITY.** Each signatory hereby represents and warrants to the other that the execution and delivery of this agreement has been duly authorized and validly executed and delivered by such party and that such agreement is binding upon such party in accordance with its terms.

9. **NON-WAIVER.** No waiver by any party of any default, or breach or series of breaches, or violation of a term, covenant or condition of this agreement shall constitute a waiver of any subsequent breach, default, or waiver of the terms of this agreement, condition, or covenant.

10. **DOES NOT RUN WITH LAND.** This agreement does not "run with the land" and will terminate, unless the City agrees otherwise, upon:

- A. A change in ownership of one or more of the restaurants; or
- B. A change in one or more of the restaurant uses; or
- C. A change in ownership of the Property; or
- D. A change in parking use that renders the shared parking substantially deficient in the opinion of the City's Zoning Administer or Police Chief.

Approved the last day dated below:

THE HEN HOUSE RESTAURANT



Notary/Date

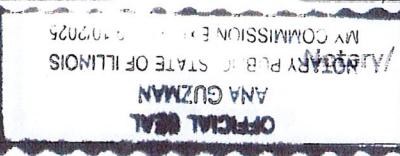
1/25/22

RESTAURANT 2



Notary/Date

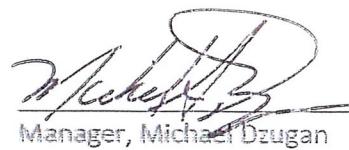
1/25/22



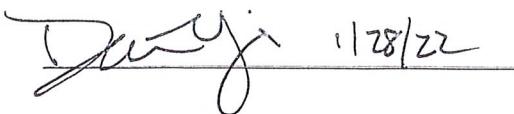
OWNER



CITY OF WHEATON


Michael Dzogan

Notary/ Date


Deanne M. Mazzochi 1/28/22

ATTESTATION:


Andrea Rosedale
City of Wheaton, City Clerk