

5/7/2012

**43-R-12**

**A RESOLUTION**

**Authorizing the City Manager to Execute a Loan  
for the Improvement of 2424 Dempster Street  
("Chicago's House of Chicken & Waffles")**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
EVANSTON, COOK COUNTY, ILLINOIS, THAT:

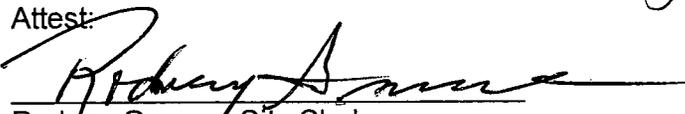
**SECTION 1:** The City Manager is hereby authorized to execute a loan, not to exceed two hundred thousand dollars (\$200,000.00) between the City and VFJ Enterprises III, Inc., which shall be secured by a mortgage and promissory note, attached hereto as Exhibits A and C, respectively, and incorporated herein by reference.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions of the mortgage and/or promissory note as he may determine to be in the best interests of the City.

**SECTION 3:** This Resolution 43-R-12 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: May 14, 2012

**EXHIBIT A**

**Mortgage Between the City and VFJ Enterprises III, Inc.**

Prepared by:  
City of Evanston  
Law Department  
2100 Ridge Avenue  
Evanston, IL 60201

Upon recording mail to:  
City of Evanston  
Law Department  
2100 Ridge Avenue  
Evanston, IL 60201

[The Above Space For Recorder's Use Only]

**JUNIOR MORTGAGE**

THIS MORTGAGE ("Mortgage") is executed and given as of the \_\_\_ day of \_\_\_\_\_, 2012, by VFJ Enterprises III, Inc., an Illinois corporation, referred to as "mortgagor," which includes mortgagor's heirs, executors, administrators, successors, legal representatives and assigns, and denotes the singular and/or plural and the masculine and/or feminine and natural and/or artificial persons whenever and wherever the context requires, to the City of Evanston, having its principal offices at 2100 Ridge Avenue, Evanston, Illinois 60201, referred to as "mortgagee."

For proper consideration, and also in consideration of the sum named in the promissory note of the same date, mortgagor grants with mortgage covenants to mortgagee, its successors and assigns, all the tract of land of which mortgagor is now the legal owner, and in actual possession, located in Cook, Illinois, described as follows:

**Legal Description:** Attached as Exhibit "A".

**Commonly known as ("Property Address"):** 2424 Dempster Street, Evanston, Illinois 60202

**PIN:** 10-24-100-029-0000

Together with all structures and improvements now and later on the land and the fixtures attached to the land, together with all tenements, easements, and appurtenances to the property, and the rents, issues, and profits, all the estate, right, title, interest, and all claims in law and in equity, of mortgagor in and to the property.

Properties covered in this mortgage are conveyed to mortgagee, free from all rights and benefits under the Illinois Homestead Exemption Laws, which rights and benefits mortgagor now releases and waives.

This mortgage is given to secure: (a) the payment of \$200,000.00 (Two Hundred Thousand and no/100 Dollars), as provided in a promissory note dated \_\_\_\_\_, 2012, which note is incorporated by reference, that note being payable as follows:

(a) The City shall acquire a lien on the Premises and said lien shall be subordinate to the first mortgage on the Premises. Mortgagor represents and warrants that it is its sole responsibility to execute such documents that may be necessary to create this lien. Mortgagor shall make monthly payments to mortgagee, amortized over twenty (20) years at a fixed interest rate of five and seventy-five hundredths' percent (5.75%). The amount due for each of the first six (6) such payments shall not exceed the interest accrued during the previous month. Mortgagee shall accept payments for no longer than five (5) years, or sixty (60) such payments, at which time mortgagor shall re-pay the balance of the loan in full.

(b) the performance of the other agreements in the note;

(c) any future advances as provided in this mortgage, and to secure the performance of mortgagor's covenants and agreements.

Provided always, that if mortgagor pays to mortgagee, its successors, legal representatives, or assigns, the amount in the promissory note mentioned above, with all interest due, and performs, complies with, and abides by each and every stipulation, agreement, condition, and covenant of the note and mortgage, and pays all taxes that may accrue on the property and all costs and expenses that mortgagee, its successors or assigns may incur in collecting the note, in the foreclosure of this mortgage or otherwise, including reasonable attorney's fees, then this mortgage and the lien created will cease, and a release of the mortgage will be executed by mortgagee.

This mortgage is subject and subordinate to the first position mortgage. Borrower expressly agrees to pay that prior mortgage and to prevent any default under that mortgage. Borrower agrees that if borrower defaults on that senior mortgage, by failing to pay any installment of principal or interest on that mortgage within ten days after its due date, or to cure any other default on that mortgage within ten days after receiving notice of a default from the senior lender, the lender on this mortgage, at lender's option, may either (a) cure the default on the senior mortgage and add the cost of curing to the principal amount of the note secured by this mortgage, or (b) declare this mortgage and the note this mortgage secures due and payable in full. Borrower agrees to give any notice of default received from the senior lender to the junior lender immediately on receipt, and to attempt to have the senior lender send notices of default to the junior lender directly. Borrower may not renew, modify, or extend the senior mortgage without the lender's consent.

#### **COVENANTS AND REPRESENTATIONS BY MORTGAGOR**

Mortgagor covenants and agrees that:

1. Mortgagor will pay the principal and interest and other amounts payable by virtue of the promissory note and this mortgage, or either, promptly on the days they become due.

2. Mortgagor will pay the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on the described property, and if they are not promptly paid, mortgagee, its successors, legal representatives, or assigns may at any time pay them without waiving or affecting the option to foreclose or any right under this mortgage, and every payment made by the mortgagee will bear interest from the date of the mortgage at the rate of 5.75% per year.

3. Mortgagor will pay all the costs, charges, and expenses, including attorney's fees, reasonably incurred or paid at any time by mortgagee, its successors, legal representatives or assigns, because of failure by mortgagor to perform, comply with, and abide by each and every stipulation, agreement, condition and covenant of the promissory note and this mortgage, or either, and every payment will bear interest from the date of the mortgage at the rate of 5.75% per year.

4. Mortgagor will keep the buildings now or later on the land insured in an amount equal to the highest insurable value, both fire and extended coverage, in a company or companies to be approved by mortgagee, with standard and customary mortgagee loss-payable clause indorsed on it, making any loss payable to mortgagee, its successors, legal representatives, or assigns; and in the event mortgagor fails to obtain insurance, then mortgagee may obtain insurance and hold it as above provided, without waiving or affecting the option to foreclose or any right under this mortgage, and the mortgagor will repay to the mortgagee on demand all premiums paid by mortgagee, with interest at the rate of 5.75% per year from the time of payment by mortgagee; all premiums paid by mortgagee will be secured by this mortgage and will be collectible in the same manner as the principal indebtedness; and should the mortgagee because of the insurance receive any amount of money for damage, that amount may be retained and applied by mortgagee toward payment of the debt secured by the mortgage, or it may be paid over either wholly or in part to the mortgagor for the repair of the buildings or for the erection of new buildings in their place, or for any other purpose or purposes satisfactory to the mortgagee; and if the mortgagee receives and retains insurance money for damage to the buildings, the lien of the mortgage will be affected only by a reduction by the amount of the insurance money retained by the mortgagee.

5. Mortgagor will not permit or cause the removal, alteration, or demolition, without the consent of the mortgagee, of any building on the premises; all buildings now or later located on the premises will be maintained by the mortgagor in good and substantial repair; mortgagor will not permit, commit, nor cause waste, impairment, or deterioration of the property, or any part of it, except reasonable wear and tear; and, in the event of the failure of mortgagor to keep the buildings on the premises and those to be erected on the premises, or improvements, in good repair, mortgagee may make repairs as in its discretion it may deem necessary for the proper preservation of the buildings and the full amount of each and every payment will be due and payable thirty (30) days after demand, and will be secured by the lien of this mortgage; and in addition, in the event of the occurrence of any of the preceding, the mortgagee will be entitled to immediately restrain the mortgagor by injunction or other appropriate remedy.

6. Mortgagor will perform, comply with, and abide by each of the stipulations, agreements, conditions, and covenants in the promissory note.

7. Mortgagee may, at any time pending an action on this mortgage, apply to the court for the appointment of a receiver, and the court will then appoint a receiver of the premises, including all income, profits, issues, and revenues from whatever source derived, each and every one of which, it is expressly understood, is mortgaged by this document, as if specifically stated and described. The receiver's appointment will be made as a matter of absolute right to mortgagee, and without reference to the adequacy or inadequacy of the value of the property mortgaged or to the solvency or insolvency of mortgagor or the defendants. Rents, profits, income, issues, and revenues will be applied by the receiver according to the lien of this mortgage and the practice of the court. In the event of any default on the part of mortgagor, mortgagor agrees to pay to mortgagee on demand as a reasonable monthly rental for the premises an amount at least equivalent to one-twelfth of the aggregate of the twelve (12) monthly installments then payable in the current year plus the actual amount of the annual taxes, assessments, water rates, and insurance premiums for that year not covered by the monthly payments.

8. If any of the sums of money are not promptly paid within thirty (30) days after becoming due, or if each of the stipulations, agreements, conditions, and covenants of the promissory note and this mortgage, or either, are not fully performed, complied with, and abided by, the aggregate sum mentioned in the promissory note will become due and payable immediately or later at the option of mortgagee, its successors, legal representatives, or assigns, as fully and completely as if the aggregate sum were originally stipulated to be paid on that day, despite anything in the promissory note or this mortgage to the contrary.

9. Mailing a written notice or demand addressed to the owner of record of the mortgaged premises or to the owner at the last address, actually furnished to mortgagee, or if none, directed to the owner at the mortgaged premises, and mailed by the United States mail, postage prepaid, will be sufficient notice and demand in any case arising under this instrument and required by the provisions of this mortgage or by law.

10. If foreclosure proceedings of any mortgage or lien of any kind superior or inferior to this mortgage are instituted, mortgagee may at its option, immediately or afterwards, declare this mortgage and the indebtedness secured due and payable.

11. The mortgagor, within ten days after request of the mortgagee, will furnish to the mortgagee or to any other person, firm, or corporation as may be designated by the mortgagee, a duly acknowledged written statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt.

12. The whole of the principal amount and interest will become due at the option of the mortgagee, under any of the following conditions: after default in the payment of any principal or interest, or any installment, as provided in the note for thirty days; after default in the payment of any tax, assessment, water charges, sewer service charge, or other governmental or other charge or rate levied or charge against the mortgage premises, for thirty days after notice and demand from the mortgagee; after default subsequent to notice and demand from the mortgagee either in assigning and delivering the insurance policies insuring the building against loss, or in reimbursing the mortgagee for premiums paid on the insurance, as above provided; or after default on request of the mortgagee in furnishing a statement of the amount due on the mortgage

and whether off-sets or defenses exist against the mortgage debt, as above provided.

13. The mortgagor warrants title to the premises and covenants with the mortgagee that the mortgagor is the true and lawful owner of the premises and has good right and full power to grant and mortgage them, and that the premises are free and clear of all encumbrances, except only restrictions and easements of record, taxes and assessments not yet due or delinquent, and any other matters as are indicated following the legal description of the premises expressly stated; and mortgagor further covenants that mortgagor will warrant and defend against all lawful claims of all persons except as above provided.

14. In case of a foreclosure sale, the premises, or so much as may be affected by this mortgage, may be sold in one parcel.

15. The mortgagor assigns to the mortgagee the rents, issues, and profits of the premises as further security for the payment of the obligations secured by this mortgage, and grants to the mortgagee the right to enter on the premises for the purpose of collecting the payments, and to rent the premises or any part of them, and to apply the moneys received from the rental, after payment of all necessary charges and expenses, to the obligation secured by this mortgage, on default under any of the covenants, conditions, or agreements contained in this mortgage. The mortgagor further promises and agrees, in the event of any default, to pay to the mortgagee, or to any receiver appointed to collect the rents, issues, and profits of the premises, a fair and reasonable occupational rent for the use and occupation of the premises or of any part that may be in the possession of the mortgagor; and on default in payment of the rental, to vacate and surrender possession of the premises, or that portion occupied by the mortgagor, to the mortgagee or the receiver.

16. In the event any action or proceeding is commenced (except an action to foreclose this mortgage or to collect the obligation secured by it) in which it becomes necessary to defend or assert the lien of this mortgage, whether or not the mortgage is made or becomes a party to such action or proceeding, all expenses of the mortgagee incurred in any action or proceeding to prosecute or defend the rights and lien created by this mortgage, including reasonable counsel fees, will be paid by the mortgagor, and if not paid promptly on request, will be added to the debt secured and become a lien on the mortgaged premises, and will be deemed to be fully secured by this mortgage and to be prior and paramount to any right, title, or interest, or claim to or on the premises accruing or attaching subsequent to the lien of this mortgage, and will bear interest at the rate provided for the obligation secured. This covenant will not govern or affect any action or proceeding to foreclose this mortgage or to recover or to collect the debt secured by it, which action or proceeding will be governed by the provisions of law and rules of court respecting the recovery of costs, disbursements, and allowances in foreclosure actions.

17. If all or any part of the premises are condemned and taken under the power of eminent domain, or if any award for any change or grade of streets affecting the premises are made, all damages and awards for the property taken or damaged will be paid to the holder of this mortgage, to the amount then unpaid on the indebtedness secured, without regard to whether or not the balance remaining unpaid on the indebtedness may then be due and payable; and the amount paid will be credited against the indebtedness and, if insufficient to pay the entire amount, may, at the option of the holder, be applied to the last maturing installments, and the balance of damages and awards, if any, will be paid to the mortgagor. The holder of this mort-

gage is given full power, right, and authority to receive any and all damages and awards.

18. If the mortgagor or any obligor on the secured note: (1) files a voluntary petition in bankruptcy under the Bankruptcy Code of the United States, or (2) is adjudicated a bankrupt under that act, or (3) is the subject of a petition filed in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or (4) makes a general assignment for the benefit of creditors, then and on the occurrence of any of the conditions, at the option of the mortgagee, the entire balance of the principal amount secured, together with all accrued interest, will immediately become due and payable.

19. Mortgagor will comply with all statutes, ordinances, and governmental requirements affecting the mortgaged premises, and if mortgagor neglects, or refuses to comply and the failure or refusal continues for a period of thirty days, then, at the option of the mortgagee, the entire balance of the principal amount secured by this mortgage, together with all accrued interest, will immediately become due and payable.

[SIGNATURES ON FOLLOWING PAGE]



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

The West 57½ Feet of the West 100.00 Feet of Lots 22, 23 and 24 (Except the North 5.00 feet taken for road by document number 0010765352) in Block 3 in Pitner and Sons 3<sup>rd</sup> Addition to Evanston, Said Addition Being a Subdivision of the Northwest ¼ of the Northwest ¼ of Section 24, Township 41 North, Range East of the Third Principal Meridian, in Cook County, Illinois.

**EXHIBIT B**

**Promissory Note Between the City and VFJ Enterprises III, Inc.**

## PROMISSORY NOTE

**Lender:**

CITY OF EVANSTON  
2100 Ridge Avenue  
Evanston, IL 60201

**Borrower:**

VFJ Enterprises III, Inc.  
c/o Randy Crumpton  
200 S. Michigan Ave. Ste. 1240  
Chicago, IL 60604

**\$200,000.00** (Two Hundred Thousand and no/100 Dollars)

The Borrower, VFJ Enterprises III, Inc., for value received, promises to pay to the order of the City of Evanston (hereafter, together with any holder hereof, called "City"), having its principal office located at 2100 Ridge Avenue, Evanston, Illinois 60201, the principal sum of \$200,000.00 (Two Hundred Thousand and no/100 Dollars), within five (5) years after the date of this note (the "Maturity Date").

In addition to payment of the principal sum to City as provided for above, the Borrower promises and agrees to pay Lender interest on the amount of principal outstanding from time to time (computed on the basis of a 360-day year for the actual number of days elapsed) at the fixed rate of 5.75% percent per annum.

Borrower shall make monthly payments to Lender, amortized over twenty (20) years. The first such payment shall be due one (1) month after the effective date of this note. The amount due for each of the first six (6) such payments shall not exceed the interest accrued during the previous month. Lender shall accept payments for no longer than five (5) years, or sixty (60) such payments, at which time Borrower shall re-pay the balance of the loan in full.

The indebtedness evidenced by this Note (including all principal and interest) is secured by a Mortgage dated \_\_\_\_\_, 2012, and/or any other related loan agreement and security instruments applicable to the following real property:

Commonly known as: 2424 Dempster Street, Evanston, Illinois 60202.

Property Identification Number ("PIN"): 10-24-100-029-0000

Borrower may prepay the principal amount outstanding in whole or in part without premium or penalty of any kind. Any partial prepayment shall be applied against the principal amount outstanding.

Lender has made the loan described herein to Borrower so that Borrower may use the loan funds in order to construct, open, and operate, on the above-described property, a restaurant known as "Chicken & Waffles."

## DEFAULTS AND REMEDIES

Failure of the Borrower to pay any amount due hereunder for a period in excess of ten (10) days after it becomes due and payable under this Note, whether interest, principal, or otherwise on the Maturity Date, or the occurrence of any other Default (as defined herein or in the Mortgage), shall constitute an event of default hereunder. At any time during the existence of any Default, and at the option of the City, the entire unpaid principal balance under this Note, together with interest accrued thereon and all other sums due from the Borrower hereunder or under the Mortgage or any of the other security agreements or documents (collectively, the "Loan Documents"), shall without notice become immediately due and payable.

If any attorney is engaged by the City, including in-house staff (a) to collect the indebtedness evidenced hereby or due under the Loan Documents, whether or not legal proceedings are thereafter instituted by the City; (b) to represent City in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (c) to protect the liens of any of the Loan Documents; (d) to represent City in any other proceedings whatsoever in connection with this Note or any of the Loan Documents or the real estate described therein; or (e) to represent City in monitoring the loan evidenced by this Note or any renewal, restructure, amendment, or the like applicable thereto, then the Borrower shall pay to City all reasonable attorneys' fees and expenses incurred or determined to be due in connection therewith, in addition to all other amounts due hereunder. Bank's remedies under this Note, the Mortgage, and all of the other Loan Documents shall be cumulative and concurrent and may be pursued against the Borrower, the real estate described in the Mortgage, and any other security described in the Loan Documents or any portion or combination of such real estate and other security, and City may resort to every other right or remedy available at law or in equity without first exhausting the rights and remedies contained herein, all in the City's sole discretion. Failure of the City, for a period of time or on more than one occasion to exercise its option to accelerate the maturity date shall not constitute a waiver of the right to exercise that option at any time during the continued existence of the Default or in the event of any subsequent Default. City shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by the City, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event.

#### OTHER MATTERS

1. **WAIVER.** The Borrower agrees to be bound and (a) waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced hereby or by any extension or renewal hereof; (b) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (c) waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (d) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (e) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by City with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (g) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such Obligors or security shall not affect the liability of any of Obligors for the payment hereof.

2. **GOVERNING LAW AND TIME LIMITATION.** This Note shall be construed and enforced in accordance with the laws of the State of Illinois. All disputes relating to the interpretation of the provisions of this Lease shall be resolved exclusively by the federal or state court located in Cook County, Illinois, and the parties hereto hereby submit to the jurisdiction and venue of the court for such purpose. The parties hereby waive trial by jury.

3. **HEADINGS.** The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Note, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires. If any provision of this Note, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Note shall be construed as if such invalid part were never included herein. Time is of the essence of this Note.

4. **BINDING OBLIGATION.** This Note and all provisions hereof shall be binding on all persons claiming under or through the Borrower, which shall include the respective beneficiaries, successors, assigns, legal and personal representatives, executors, administrators, devisees, legatees, and heirs of the Borrower.

[SIGNATURES ON FOLLOWING PAGE]



