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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2016 038518

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REPLACEMENT PROMISSORY NOTE

MICHAEL B. BROWN  
RECORDER May 5, 2016

\$1,525,000.00

FOR VALUE RECEIVED, **KINZIE GARY LIMITED PARTNERSHIP**, an Illinois limited partnership ("Borrower"), hereby promises to pay to the order of **BMO HARRIS BANK N.A.**, a national banking association, formerly known as HARRIS N.A. (together with any and all of its successors and assigns and/or any other holder of this Replacement Promissory Note, "Lender"), without offset, in immediately available funds in lawful money of the United States of America, at its principal office at 115 S. LaSalle St., Floor 20W, Chicago, Illinois 60603, the principal sum of One Million Five Hundred Twenty Five Thousand and No/100 Dollars (\$1,525,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

Section 1.1 Replacement Note. This Replacement Promissory Note (as amended, modified, extended, renewed, supplemented or replaced, the "Note") is executed and delivered pursuant to the Fourth Loan Modification Agreement (the "Modification") dated as of an even date herewith among Borrower, Lender, Andrew W. Brown and Charles F. Clarke III pursuant to which the Loan Documents (described below) have been modified, and replaces and supersedes that certain promissory note (the "Prior Note") dated February 27, 2009 in the original stated principal amount of One Million Six Hundred Seventy Five Thousand and No/100 Dollars (\$1,675,000.00) executed by Borrower to the order of Lender, as modified by that certain Loan Modification Agreement dated as of January 31, 2012 between Borrower and Lender, as modified by that certain Second Loan Modification Agreement dated as of January 31, 2013 between Borrower and Lender, as amended by that Third Loan Modification Agreement dated as of May 20, 2013 between Borrower and Lender and recorded on June 17, 2013 with the Lake County, Indiana Recorder as Document No. 2013044129. This Note shall not be construed (a) to deem paid or forgiven the unpaid principal amount of, or unpaid accrued interest on, the Prior Note outstanding at the time of replacement, or (b) to release, cancel, terminate or otherwise adversely affect all or any part of any lien, mortgage, deed of trust, assignment, security interest or other encumbrance heretofore granted to or for the benefit of the Lender, as payee under the Prior Note.

Section 1.2 Payment Schedule and Maturity Date.

(a) Payment of Principal. The principal balance of the Loan shall be payable monthly in arrears on the first (1st) day of each month commencing on June 1, 2016 and continuing on the first (1st) day of each month thereafter until the entire Loan is paid in full. Each monthly payment of principal shall be in the amount of \$4,167.00. Notwithstanding anything contained herein to the contrary, the entire principal balance of the Loan then unpaid, together with all accrued and unpaid interest and all other amounts payable hereunder and under the other Loan Documents (as hereinafter defined), shall be due and payable in full on May 5, 2018 (the "Maturity Date"), the final maturity of this Note, unless extended in accordance with Section 1.3 below.

(b) Payment of Interest. Interest accruing on the Loan at the Interest Rate shall be payable monthly in arrears on the first (1st) day of each month commencing on June 1, 2016 and continuing on the first (1st) day of each month thereafter until the entire Loan is paid in full. Interest after maturity of the Loan shall be due and payable upon demand.



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Section 1.3 Extension Option. Lender shall grant a request by Borrower to extend the Maturity Date of this Note to May 5, 2019 (the "Extended Maturity Date"), upon and subject to the following terms and conditions:

(a) Basic Conditions. Unless otherwise agreed by Lender in writing:

(i) Borrower shall request the extension, if at all, by written notice to Lender not more than 90 days, and not less than 30 days, prior to the Maturity Date.

(ii) At the time of the request, and at the time of the extension, there shall not exist any Event of Default, nor any condition or state of facts which after notice and/or lapse of time would constitute an Event of Default.

(iii) At the time of the request, and at the time of the extension, the loan to value ratio with respect to the Loan and the Real Estate as determined by Lender in its sole discretion based on a current appraisal may not be greater than sixty-five percent (65%).

(iv) Current financial statements regarding Borrower and each Guarantor (all as defined in the Loan Agreement) (dated not earlier than thirty (30) days prior to the request for extension) and all other financial statements and other information as may be required under the Loan Documents regarding Borrower, General Partner, each Guarantor and the Property, shall have been submitted promptly to Lender, and there shall not have occurred, in the opinion of Lender, any material adverse change in the business or financial condition of Borrower, General Partner, or any Guarantor or any tenant of the Property, or in the Property or in any other state of facts submitted to Lender in connection with the Loan Documents, from that which existed on the date of this Note.

(v) When the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with the proposed extension (pre- and post-closing), including appraisal fees, environmental audit and reasonable attorneys' fees actually incurred by Lender; all such costs and expenses incurred up to the time of Lender's written agreement to the extension shall be due and payable prior to Lender's execution of that agreement (or if the proposed extension does not become effective, then upon demand by Lender), and any future failure to pay such amounts shall constitute a default under the Loan Documents.

(vi) All applicable regulatory requirements, including appraisal requirements, shall have been satisfied with respect to the extension.

(vii) Not later than the Maturity Date, (A) the extension shall have been consented to and documented to Lender's satisfaction by Borrower, General Partner, each Guarantor, Lender, and all other parties deemed necessary by Lender (such as any permitted subordinate lienholders, tenants of the Property and permanent lenders (if any)); (B) Lender shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Lender; and (C) Borrower shall have paid to Lender a non-refundable extension fee an amount equal to fifteen basis points (0.15%) of the then outstanding principal balance hereunder.

(viii) The outstanding principal balance evidenced by this Note shall bear interest from the date that the extension of the Maturity Date is granted through the Extended Maturity



Date, at a floating rate per annum determined by adding 2.69% per annum to the LIBOR Rate (defined below) as in effect from time to time.

(ix) The Debt Service Coverage Ratio (as defined in the Loan Agreement) for the Project for the twenty-four (24) month period prior to the Maturity Date shall be not less than 1:15:1:00.

(b) Changes in Loan Terms. All terms and conditions of the Loan Documents shall continue to apply to the extended term except to the extent changed as indicated below (such changes to be effective on and after the original Maturity Date, if the extension becomes effective as provided herein):

(i) Definition of Maturity Date. The Maturity Date shall mean the Extended Maturity Date.

Section 2. Security; Loan Documents. The security for this Note includes a Construction Mortgage with Assignment of Rents, Security Agreement and Fixture Filing (as the same has or may from time to time be amended, restated, modified or supplemented, the "Mortgage") dated as of February 27, 2009 from Borrower to Lender, conveying and encumbering certain real and personal property more particularly described therein (the "Property"). This Note, the Mortgage, the Construction Loan Agreement between Borrower and Lender dated as of February 27, 2009 (as the same has or may from time to time be amended, restated, modified or supplemented, the "Loan Agreement") and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same may from time to time be amended, restated, modified or supplemented, are herein sometimes called individually a "Loan Document" and together the "Loan Documents."

Section 3.1. Interest Rate. The outstanding principal balance evidenced by this Note shall bear interest from the date hereof through the Maturity Date at a floating rate per annum (the "Interest Rate") determined by adding 2.69% per annum to the LIBOR Rate as in effect from time to time, *provided* that if the Loan or any part thereof is not paid when due (whether by lapse of time, acceleration or otherwise), or at the election of the Lender upon notice to the Borrower during the existence of any other Event of Default, the Loan shall bear interest, whether before or after judgment, until payment in full thereof at the Default Interest Rate per annum. Interest on the Loan shall be computed on the basis of a year of 360 days for the actual number of days elapsed. The LIBOR Rate (together with margin set forth above) shall initially be equal to 3.126% per annum, and thereafter the LIBOR Rate shall be reset on the first day of every one month occurring after the date hereof (herein, a "Change Date") and remain in effect until the next Change Date. For purposes hereof, the term "LIBOR Rate" means the 1-month London Interbank Offered Rate (LIBOR) as reported on Bloomberg Financial Market's terminal screen entitled "*Official BBA LIBOR Fixings*" as reported on the relevant Change Date (or, if such Change Date is not a bank business day, on the immediately prior Business Day), adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation, such rate rounded up to the nearest one-sixteenth percent, unless such rate is no longer available or published, in which case such rate shall be at a comparable index rate selected by the Lender with notice to the Borrower. The Lender shall determine the interest rate applicable to the Loan based on the foregoing, and its determination thereof shall be conclusive and binding except in the case of manifest error. The interest rate payable under this Note shall be subject, however, to the limitation that such interest rate shall never exceed the highest rate which the Borrower may contract to pay under applicable law.

Section 4. Prepayment. The Loan may be prepaid at any time, in whole or in part, without penalty.

Section 5. Late Charges and Default Interest Rate.

(a) Late Charges. If Borrower shall fail to make any payment under the terms of this Note (other than full payment due at maturity) within fifteen (15) days after the date such payment is due, Borrower shall pay to Lender on demand a late charge equal to four percent (4%) of the amount of such payment. Such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. The late charge is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other amount that Lender may be entitled to receive or action that Lender may be authorized to take as a result of such late payment.

(b) Default Interest Rate. While any Event of Default exists, Borrower promises to pay interest on the unpaid principal balance of the Loan from time to time, at a rate per annum (the "Default Interest Rate") equal to the Interest Rate, plus five percent (5%), and all unpaid interest that has accrued under this Note, whether before or after the occurrence of the Event of Default, shall be paid at the time of, and as a condition precedent to, the curing of the Event of Default. While any Event of Default exists, Lender is expressly authorized to apply payments made under this Note as it may elect against (a) any or all amounts, or portions thereof, then due and payable hereunder or under any of the other Loan Documents, (b) the unpaid principal balance of the Loan, or (c) any combination thereof.

Section 6. Certain Provisions Regarding Payments. All payments made under this Note shall be applied, to the extent thereof, to late charges, to accrued but unpaid interest, to unpaid principal, and to any other sums due and unpaid to Lender under the Loan Documents, in such manner and order as Lender may elect in its sole discretion, any instructions from Borrower or anyone else to the contrary notwithstanding. Remittances shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and shall be accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not in any way (a) waive or excuse the existence of an Event of Default (as hereinafter defined), (b) waive, impair or extinguish any right or remedy available to Lender hereunder or under the other Loan Documents, or (c) waive the requirement of punctual payment and performance or constitute a novation in any respect. Payments received after 2:00 p.m. shall be deemed to be received on, and shall be posted as of, the following Business Day. Whenever any payment under this Note or any other Loan Document falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

Section 7. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

- (a) Borrower fails to pay when and as due and payable any amounts payable by Borrower to Lender under the terms of this Note.
- (b) Any covenant, agreement or condition in this Note is not fully and timely performed, observed or kept, subject to any applicable grace or cure period.
- (c) An Event of Default (as therein defined) occurs under any of the Loan Documents other than this Note (subject to any applicable grace or cure period).

Section 8. Remedies. Upon the occurrence of an Event of Default, Lender may at any time thereafter exercise any one or more of the following rights, powers and remedies:



8.1. Lender may accelerate the Maturity Date and declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.

8.2. Lender may set off the amount due against any and all accounts, credits, money, securities or other property now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.

8.3. Lender may exercise any of its other rights, powers and remedies under the Loan Documents or at law or in equity.

Section 9. Remedies Cumulative. All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default.

Section 10. Costs and Expenses of Enforcement. Borrower agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses, whether or not suit is filed hereon, or whether in connection with bankruptcy, insolvency or appeal.

Section 11. Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon Kinzie Gary Limited Partnership c/o Kinzie Assets, LLC, 806 Greenwood Street, Evanston, Illinois 60201, the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions, subject to any provision or agreement for arbitration or dispute resolution set forth in the Loan Agreement.

Section 12. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents.

Section 13. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and each party executing this Note as Borrower hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that

Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the state in which any of the Property is located for the enforcement of any and all obligations under this Note and the other Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate to the Loan and the Loan Documents any and all rights against Borrower and any security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. This Note and its validity, enforcement and interpretation shall be governed by the laws of the state in which payment of this Note is to be made (without regard to any principles of conflicts of laws) and applicable United States federal law.

Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. The term "Business Day" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 14. Notices; Time. All notices, requests, consents, approvals or demands (collectively, "Notice") required or permitted by this Note to be given by any party to any other party hereunder shall, unless specified otherwise, be in writing (including facsimile (fax) transmission) and shall be given to such party at its address or fax number set forth in the notice provisions of the Loan Agreement, or at such other address or fax number as such party may hereafter specify for the purpose by Notice to the other party. Each such Notice shall be effective when actually received by the addressee or when the attempted initial delivery is refused or when it cannot be made because of a change of address of which the sending party has not been notified; provided, that notices to Lender under Sections 3.1 through 3.8 hereof, inclusive, and notices of changed address or fax number, shall not be effective until received.

Section 15. No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other indebtedness secured by the Mortgage, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of

the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use or forbearance of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan.

[signature appears on following page]



IN WITNESS WHEREOF, Borrower has duly executed this Replacement Promissory Note as of the date first above written.

KINZIE GARY LIMITED PARTNERSHIP, an Illinois limited partnership

By: Kinzie Gary General LLC,  
an Illinois limited liability company,  
its General Partner

By: Kinzie Assets, LLC,  
an Illinois limited liability  
company, its Manager and Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

