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**LAKE COUNTY FIRST REAL ESTATE MORTGAGE**

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MARGARETTE CLEVELAND  
RECORDER

Chicago Title Insurance Company

**THIS INSTRUMENT ("Mortgage") WITNESSES:** That Hoosier Park, L.P., an Indiana limited partnership ("Mortgagor"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby **MORTGAGES** and **WARRANTS** to Claypool Development Company, an Indiana general partnership ("Mortgagee"), the real estate ("Real Estate") and property located in Lake County, State of Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein together with all rights, title and interests of Mortgagor in and to: (i) All rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) All buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and all replacements thereof ("Improvements"); (iii) All extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); (iv) All rents, issues and proceeds, including all payments made in connection with leases, subleases and other agreements affecting the Real Estate, Easements, Improvements or Additions ("Rents"); and (v) All awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements, Additions, Rents, and Proceeds are referred to together as the "Mortgaged Property").

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure (i) the timely performance of all obligations of Mortgagor under that certain Lease dated as of August 10, 1995, by and between Mortgagee, as Landlord, and Mortgagor, as Tenant, with respect to the real estate more particularly described on Exhibit "B" attached hereto and incorporated herein (the "Lease") including without limitation the prompt payment of all Rental (as defined in the Lease) (the "Primary Obligations"); (ii) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage, plus interest thereon at the rate of ten percent (10%) per annum ("Default Rate") from the date paid or incurred until reimbursement ("Advancements"); (iii) all costs of repossession, collection, disposition and reasonable attorneys' fees incurred by Mortgagee ("Costs"); and (iv) any and all extensions or renewals of any of the foregoing obligations or indebtedness ("Extensions"). (Hereinafter, the Rental Advancements, Costs and Extensions are referred together as the "Indebtedness.")

Mortgagor hereby further covenants with the Mortgagee as follows:

1. **Performance of Obligations Under Lease.** Mortgagor covenants and agrees to promptly perform the Primary Obligations and to promptly pay the Indebtedness as and when the performance or payment thereof become due, all without relief from valuation and appraisal laws and with attorneys' fees.
2. **Care and Condition of Mortgaged Property.** Mortgagor shall (a) promptly repair, restore or rebuild the Mortgaged Property, or any portion thereof, which is damaged or destroyed; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's lien or claims for lien not expressly subordinated to this Mortgage, except for mechanic's or materialman's liens or claims which Mortgagor is in good faith contesting by appropriate proceedings, provided that Mortgagor (i) gives notice to Mortgagee of its intention to contest such lien, (ii) provides adequate security by, at Mortgagor's option, either (x) tendering a bond in the form and amount required by the applicable Indiana mechanic's or materialman's lien law, (y) escrowing the disputed amount of such lien plus reasonable enforcement costs or (z) delivering an endorsement to Mortgagee's title insurance policy or a title insurance policy commitment showing Mortgagee's title in and to the Mortgaged Property free and clear of the effect of such mechanic's or materialmen's lien and (iii) promptly satisfies any final judgment rendered which is adverse to Mortgagor once all appeals are exhausted, pays costs and charges required to be

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paid by Mortgagor in accordance with such judgment, and promptly thereafter causes such mechanic's or materialman's lien to be released of record; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to the lien of this Mortgage; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; (e) permit no change in or alteration of the design, structural character or general nature of the Real Estate and the Improvements that would materially diminish the value of the Mortgaged Property without Mortgagee's prior written consent (which consent shall not be withheld unreasonably); and (f) permit Mortgagee to enter upon and inspect the non-proprietary and non-confidential areas of the Mortgaged Property at all reasonable times upon at least twenty-four (24) hours advance notice, except in the event of an emergency; provided, however, nothing contained herein shall be deemed to impair or in any way prohibit the Mortgagee from auditing the Mortgagor's books and records as provided in the Lease.

3. **Warranties.** Mortgagor covenants and warrants that: (a) Mortgagor is lawfully seized of the Real Estate in fee simple, has valid and indefeasible title to the Mortgaged Property and has a good and legal right to convey and mortgage the Mortgaged Property; and (b) except as otherwise provided in Paragraph 7 hereof, the Mortgaged Property is and will remain free from all liens and encumbrances, and Mortgagor will warrant and defend title to the Mortgaged Property against all claims made thereon.

4. **Insurance.** Mortgagor will keep the Mortgaged Property insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive and contractual liability insurance (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts, and by companies reasonably satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagor unless there exists an uncured Event of Default under the Lease by Mortgagor, in which case losses thereunder shall be payable to Mortgagee pursuant to standard noncontributing mortgage endorsements in favor of Mortgagee. Any monies received as payment for any loss under any of the Required Insurance paid over to Mortgagee may be applied, at the option of Mortgagee, to satisfy (i) existing Events of Default under the Lease and (ii) any unpaid Indebtedness, then to the reimbursement of Mortgagor for expenses incurred by Mortgagor in the restoration or repair of the Mortgaged Property. Proceeds paid or payable to Mortgagor of the Required Insurance shall be applied to restoration of the Mortgaged Property in such fashion as Mortgagor reasonably may require; provided, however, that if Mortgagor determines not to rebuild the Mortgaged Property, then Mortgagor shall either (i) promptly deliver such proceeds of the Required Insurance to Mortgagee or (ii) provide to Mortgagee new security of equal or greater value acceptable to Mortgagee to secure the Primary Obligations and the Indebtedness.

5. **Taxes.** Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof.

6. **Protection of Security by Mortgagee.** Mortgagee may, after an Event of Default, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable attorneys' fees, and any other reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

7. **Transfer of Mortgaged Property.** Mortgagor shall not, without the prior written consent of Mortgagee (which consent may be withheld without reasonable cause), lease,

transfer, sell, contract to sell or in any way further encumber all or any part of the Mortgaged Property; provided, however, that Mortgagee shall not unreasonably withhold its consent to a transfer of the Mortgaged Property if Mortgagor has provided Mortgagee with substitute security reasonably acceptable to Mortgagee. Notwithstanding the foregoing, Mortgagee acknowledges and agrees that Mortgagor will grant to Churchill Downs Management Company a second mortgage on the Mortgaged Property which mortgage shall be subject and subordinate to this Mortgage.

8. **Condemnation.** If all or any part of the Mortgaged Property, is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award or compensation payable in respect of the part so taken or damaged shall be paid directly to Mortgagor unless there exists an uncured Event of Default under the Lease by Mortgagor, in which case such proceeds are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium to satisfy (i) existing Events of Default under the Lease and (ii) any unpaid Indebtedness, then to restoration of the Mortgaged Property.

9. **Default and Acceleration.** Time is of the essence of this Mortgage. Upon the occurrence of any "Event of Default" (as hereinafter defined), and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests. The following shall each constitute an "Event of Default" for purposes of this Mortgage:

(a) Default: (i) in the payment of any of the Indebtedness within fifteen (15) days after notice from Mortgagee that it is due, or (ii) in the performance any covenant or term of this Mortgage within thirty (30) days after written notice or demand therefor is served upon Mortgagor by Mortgagee, unless within such thirty (30) day period, Mortgagor shall have commenced action reasonably designed to eliminate such default of performance and diligently, expeditiously and continuously pursues such action to a successful conclusion;

(b) The occurrence of an Event of Default (as defined in the Lease) by Mortgagor under the Lease;

(c) Lease, sublease, assignment, sale, contracting for sale, transfer or superior encumbrance of all or any part of the Mortgaged Property, without Mortgagee's prior written consent;

(d) If Mortgagor becomes the subject of an order for relief under the United States Bankruptcy Code, takes any action to obtain relief under the United States Bankruptcy Code, files an answer admitting bankruptcy or insolvency or in any manner is adjudged bankrupt or insolvent;

(e) Any part of the Mortgaged Property or all or any substantial part of the property or assets of Mortgagor is placed in the hands of any receiver or trustee, or Mortgagor consents, agrees or acquiesces to the appointment of any such receiver or trustee;

(f) Institution of proceedings to enforce or foreclose any prior mortgage lien or any other mortgage or lien upon all or any part of the Mortgaged Property;

10. **Foreclosure and Application of Proceeds.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence,

stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be allowed and included as Indebtedness in the judgment for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority: First, on account of all Advancements incident to the foreclosure proceedings and all Costs; second, all other items which under the terms of this Mortgage constitute Indebtedness additional to the Rental; third, all principal, interest and other amounts remaining due and unpaid on the Rental; and fourth, any remainder to the person or persons entitled thereto as determined by the court in the foreclosure proceedings.

11. **Foreclosure Proceedings and Receiver.** Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

12. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein.

13. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage.

14. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified United States mail, addressed to Mortgagor at the following address:

Mr. Jeffrey M. Smith  
700 Central Avenue  
Louisville, Kentucky 40208

With copies to:

Mr. Alexander M. Waldrop  
700 Central Avenue  
Louisville, Kentucky 40208

Mr. Richard Moore  
Anderson Park, Inc.  
4500 Dan Patch Circle  
Anderson, Indiana 46013

and to Mortgagee at the following address:

Claypool Development Company  
c/o Melvin Simon & Associates, Inc.  
115 West Washington Street  
Indianapolis, Indiana 46207  
Attention: Herbert Simon and  
David Simon

With copies to:

Claypool Development Company  
c/o Melvin Simon & Associates, Inc.  
P. O. Box 7033  
Indianapolis, Indiana 46207  
Attention: Steven E. Fivel

or at such other place as either party may, by notice in writing, designate as a place for service of notice.

15. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the landlord and its successors and assigns from time to time, of the Lease.

16. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.





LEGAL DESCRIPTION

PARCEL 1: THE SOUTH 212 FEET OF LOT 36, SOUTHMOOR PARK 2ND ADDITION, AS SHOWN IN PLAT BOOK 30, PAGE 59, IN LAKE COUNTY, INDIANA, EXCEPT THAT PORTION DEEDED TO THE STATE OF INDIANA AND DESCRIBED AS: BEGINNING ON THE SOUTH LINE OF SAID LOT SOUTH 89 DEGREES 29 MINUTES 30 SECONDS EAST 255.85 FEET FROM THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTH 55 DEGREES 54 MINUTES 57 SECONDS EAST 24.02 FEET TO THE SOUTHEASTERN LINE OF SAID LOT; THENCE ALONG SAID SOUTHEASTERN LINE SOUTHWESTERLY 22.20 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 15.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 48 DEGREES 07 MINUTES 00 SECONDS WEST AND A LENGTH OF 20.23 FEET TO THE SOUTH LINE OF SAID LOT; THENCE NORTH 89 DEGREES 29 MINUTES 30 SECONDS WEST 4.83 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

PARCEL 2: PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P. M., LAKE COUNTY, INDIANA, DESCRIBED AS BEGINNING AT A POINT LYING ON THE NORTH LINE OF SAID SECTION 21 AND 356.26 FEET WEST OF THE NORTHEAST CORNER OF SAID SECTION 21, SAID POINT BEING THE NORTHWEST CORNER OF A TRACT OF LAND PREVIOUSLY CONVEYED TO MERRI-BOWL, INC., BY DEED DATED DECEMBER 26, 1963, AND RECORDED ON FEBRUARY 1, 1964, IN DEED RECORD 1255, PAGE 303; THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID SECTION 21 ALONG THE WEST LINE OF SAID TRACT CONVEYED TO MERRI-BOWL, INC., 300.00 FEET; THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 21, 290.40 FEET; THENCE NORTH AND PARALLEL WITH THE EAST LINE OF SAID SECTION 21, 300.00 FEET TO SAID NORTH LINE; THENCE EAST ALONG SAID NORTH LINE, 290.40 FEET TO THE POINT OF BEGINNING, EXCEPT THE EAST 72.5 FEET AND THE SOUTH 30 FEET.

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PARCEL 3: BEGINNING AT THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P. M., IN LAKE COUNTY, INDIANA; THENCE WEST ALONG THE NORTH LINE OF SECTION 21, A DISTANCE OF 356.26 FEET; THENCE SOUTH 100 FEET; THENCE EAST AND PARALLEL TO THE NORTH LINE OF SAID SECTION 21 A DISTANCE OF 356.26 FEET; THENCE NORTH A DISTANCE OF 100 FEET TO THE PLACE OF BEGINNING, EXCEPT THAT PORTION DEEDED TO THE STATE OF INDIANA AND DESCRIBED AS: A PART OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 35 NORTH, RANGE 8 WEST, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION, NORTH 89 DEGREES 29 MINUTES 30 SECONDS WEST 49.14 FEET FROM THE NORTHEAST CORNER OF SAID SECTION, WHICH POINT IS WHERE THE WEST BOUNDARY OF S. R. 53 MEETS THE SOUTH BOUNDARY OF 77TH AVENUE; THENCE SOUTH 0 DEGREES 07 MINUTES 30 SECONDS EAST 16.36 FEET ALONG THE BOUNDARY OF SAID S. R. 53; THENCE NORTH 50 DEGREES 27 MINUTES 51 SECONDS WEST 25.98 FEET TO THE NORTH LINE OF SAID SECTION AND THE SOUTH BOUNDARY OF SAID 77TH AVENUE; THENCE SOUTH 89 DEGREES 29 MINUTES 30 SECONDS EAST 20.00 FEET ALONG SAID NORTH LINE AND ALONG THE BOUNDARY OF SAID 77TH AVENUE TO THE POINT OF BEGINNING.

PARCEL 4: THE SOUTH 38.0 FEET OF THE WEST 83.0 FEET TO THE NORTH 140 FEET OF LOT 36, SOUTHMOOR PARK 2ND ADDITION, AS SHOWN IN PLAT BOOK 30, PAGE 59, IN LAKE COUNTY, INDIANA.

EXHIBIT "A"

EXHIBIT B

Lots Numbered Four (4), Five (5), and Six (6) in Square Fifty-four (54) of the Donation Lands of the City of Indianapolis, Marion County, State of Indiana. Also, beginning at the Southwest corner of Lot Six (6) in Square Fifty-four (54) of the Donation Lands of the City of Indianapolis; thence West on and along the North line of Washington Street a distance of Fifteen (15) feet to the Southeast corner of Lot Seven (7) in Square Fifty-four (54); thence North upon and along the East lines of Lot Seven (7), Eight (8), and Nine (9) in Square Fifty-four (54) a distance of One Hundred and Ninety-five (195) feet to a point in the South line of West Court Street, said point also being the Northeast Corner of Lot Nine (9) of said Square Fifty-four (54); thence East in and along the South line of West Court Street a distance of Fifteen (15) feet to a point, said point being the Northwest corner of Lot Six (6) in Square Fifty-four (54); thence South upon and along the West line of Lot Six (6) in Square Fifty-four a distance of One Hundred and Ninety-five (195) feet to the place of beginning, being Muskingum Street as vacated by proceedings pursuant to Declaratory Resolution No. 79-VAC-16 adopted May 9, 1979 as set forth in a transcript thereof recorded August 16, 1979 as Instrument No. 79-60886 in the Office of the Recorder of Marion County, Indiana.

Except, however all improvements over, upon, under and within the following described real estate:

A part of the vacated Muskingum Street in Square 54 of the Donation Lands of the City of Indianapolis, vacated by Declaratory Resolution No. 79-VAC-16, recorded as Instrument No. 79-60886 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of Lot 6 in Square 54 of the Donation Lands of the City of Indianapolis; thence North 00 degrees 01 minute 38 seconds East on and along the West line of said Lot 6, 194.82 feet to the Northwest corner of said Lot 6; thence South 89 degrees 56 minutes 09 seconds West 15.00 feet on and along the South right-of-way line of Court Street to the Northeast corner of Lot 9 in said Square 54; thence South 00 degrees 01 minute 38 seconds West on and along the East lines of Lots 9, 8, and 7 in said Square 54, 194.83 feet to the Southeast corner of said Lot 7; thence North 89 degrees 55 minutes 06 seconds East on and along the North right-of-way line of Washington Street 15.00 feet to the point of beginning.

