

01-23-2001



101590461

1.8.01

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- New
- Resubmission (Non-Recordation)  
Document ID # \_\_\_\_\_
- Correction of PTO Error  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_
- Corrective Document  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

**Conveyance Type**

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year  
\_\_\_\_\_
- Merger
- Change of Name
- Other \_\_\_\_\_

**Conveying Party**

Mark if additional names of conveying parties attached

Name CHURCHILL DOWNS INCORPORATED Execution Date  
Month Day Year  
12 29 2000

Formerly \_\_\_\_\_ 101127

Individual  General Partnership  Limited Partnership  Corporation  Association

Other \_\_\_\_\_

Citizenship/State of Incorporation/Organization KENTUCKY

**Receiving Party**

Mark if additional names of receiving parties attached

Name CDIP HOLDINGS, LLC

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 1050 SOUTH PRAIRIE AVENUE

Address (line 2) \_\_\_\_\_

Address (line 3) INGLEWOOD CALIFORNIA 90301  
City State/Country Zip Code

Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation  Association

Other LIMITED LIABILITY COMPANY

Citizenship/State of Incorporation/Organization KENTUCKY

01/23/2001 DBYRNE 0000048 101127

01 FC:481 40.00 DP  
02 FC:482 100.00 DP

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**TRADEMARK**  
REEL: 002217 FRAME: 0047

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

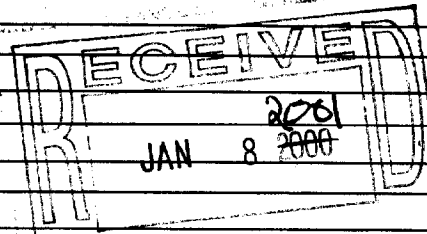
Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)



**Correspondent Name and Address**

Area Code and Telephone Number

(502) 589-5235

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

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<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="1011127"/>	<input type="text" value="1557889"/>	<input type="text" value="0997385"/>
<input type="text" value="1534197"/>	<input type="text" value="1713541"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

STEVEN L. SNYDER

Name of Person Signing

Signature

Date Signed

# RECORDATION FORM COVER SHEET CONTINUATION TRADEMARKS ONLY

## Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

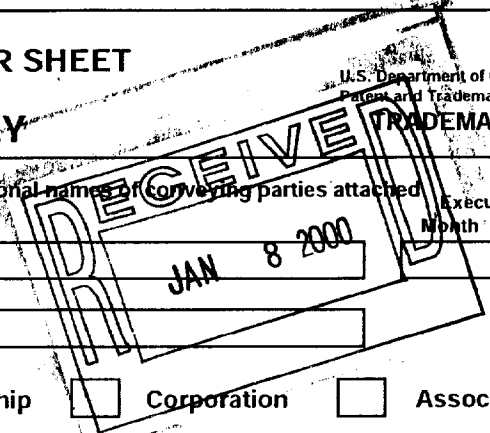
Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship State of Incorporation/Organization



## Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual  General Partnership  Limited Partnership

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

## Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

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ASSIGNMENT

WHEREAS, CDIP Holdings, LLC (a Kentucky limited liability company), 1050 South Prairie Avenue, Inglewood, California 90301 ("CDIP Holdings"), has adopted and used in the United States the marks listed on Exhibit A;

WHEREAS, CDIP, LLC (a Kentucky limited liability company), 1050 South Prairie Avenue, Inglewood, California 90301 ("CDIP") is desirous of acquiring said marks, and any registrations or applications thereof;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, CDIP Holdings hereby assigns to CDIP all its right, title and interest in and to the marks shown on Exhibit A, throughout the world, together with the goodwill of the business connected with the use of and symbolized by the said marks and the registrations or applications thereof identified on Exhibit A.

CDIP HOLDINGS, LLC

By: Rebecca C. Reed

Printed Name: Rebecca C. Reed

Title: Vice President

Date: 12/30/00

COMMONWEALTH OF KENTUCKY )

COUNTY OF JEFFERSON )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 30<sup>th</sup> day of December, 2000, by Rebecca C. Reed, Vice President of CDIP Holdings, LLC, for and on behalf of CDIP Holdings, LLC.

My commission expires: 9-6-02

Sue Carwile  
Notary public

**EXHIBIT A**

CDIP Holdings, LLC to CDIP, LLC

<b>Mark</b>	<b>Registration No.</b>
CHURCHILL DOWNS	1011127
CHURCHILL DOWNS	1557889
KENTUCKY DERBY	0997385
THE KENTUCKY DERBY	1534197
KENTUCKY OAKS	1713541

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**LICENSE AGREEMENT**

**BETWEEN**

**CDIP, LLC**

**AND**

**CHURCHILL DOWNS INCORPORATED**

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Dated as of December 31, 2000

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made as of this 31<sup>st</sup> day of December 2000 (the "Effective Date"), by and between CDIP, LLC, a Kentucky limited liability company ("LICENSOR"), and Churchill Downs Incorporated, a Kentucky corporation ("LICENSEE").

### WITNESSETH

A. LICENSOR is the owner of certain trade names, trademarks, service marks and other intangibles and of domestic and foreign registrations with respect thereto, or applications for such registrations, as listed on EXHIBIT A attached hereto (which trade names, trademarks, service marks, other intangibles, registrations and applications are hereinafter collectively referred to as the "MARKS").

B. LICENSEE desires to obtain from LICENSOR, and LICENSOR desires to grant to LICENSEE, a non-exclusive license to use the MARKS in connection with both its existing and ongoing business operations in the United States of America and foreign countries (hereinafter referred to as the "TERRITORY").

C. LICENSOR grants to LICENSEE the authority to execute sublicense agreements with third parties; and such sublicense agreements will reflect the quality control standards as described within this document.

NOW, THEREFORE, for good and valuable consideration received by LICENSOR from LICENSEE, the receipt and sufficiency whereof are hereby acknowledged, and in consideration of the representations and covenants hereinafter set forth, the parties hereto hereby agree as follows:

### ARTICLE I

#### **SERVICE MARK AND TRADEMARK MANAGEMENT AND ADMINISTRATION**

##### **Section 1.1 Grant of License.**

(a) LICENSOR hereby grants to LICENSEE, and LICENSEE hereby accepts, a non-exclusive right, license and privilege to use the MARKS listed in EXHIBIT A in the TERRITORY in connection with the operation of its business. The products and services for which the MARKS are used pursuant to this agreement are hereinafter collectively referred to as the "LICENSED PRODUCTS OR SERVICES."

(b) LICENSOR hereby grants to LICENSEE, and LICENSEE hereby accepts, the non-exclusive right, license and privilege to use any trade names, trademarks, service marks and other intellectual property in which LICENSOR subsequently acquires an interest during the term of this Agreement, which intellectual property shall be deemed for purposes of this Agreement to be

included as MARKS. The parties agree periodically to update EXHIBIT A as necessary to accurately reflect any addition or deletions therefrom.

**Section 1.2 Ownership of the MARKS.**

(a) Nothing contained in this Agreement shall be construed as an assignment or grant to LICENSEE of any ownership right, title, or ownership interest in or to the MARKS, it being understood and acknowledged by LICENSEE that all rights and goodwill related thereto are reserved by LICENSOR, except for the license granted hereunder to LICENSEE of the right to use the MARKS only as specifically and expressly provided in this Agreement or amendments hereto.

(b) LICENSEE agrees that it will not directly or indirectly attack or impair the title of LICENSOR to the MARKS, the validity of this Agreement, or any of LICENSOR's registrations or applications therefor. LICENSEE further agrees not to file any state or federal applications for any mark or trade name featuring the MARKS or any trade name, trademark or term confusingly similar thereto.

(c) LICENSEE shall not, and warrants and represents that it will not, at any time, either during the term of this Agreement or thereafter, challenge LICENSOR's ownership of the MARKS, challenge the validity of the MARKS, or do or cause to be done, or omit to do, any act or thing, the doing or omission of which would contest, or in any way impair or tend to impair, any right, title or interest of LICENSOR in the MARKS.

(d) LICENSEE shall not, and warrants that it will not, in any manner whatsoever, represent that it has any ownership in, or right, title or interest to, the MARKS, or any registrations thereof, which are in addition to such rights expressly granted under this Agreement, and acknowledges that its use of the MARKS shall not create in it any right, title or interest in or to the MARKS, but that all uses by it of the MARKS shall inure to the benefit of LICENSOR.

(e) On termination of this Agreement for any reason, LICENSEE shall cease and desist from all uses of the MARKS in any form or manner, and shall deliver to LICENSOR, or its duly authorized representative, all materials, containers, wrappers, papers and other items on which the MARKS appear. Nor shall LICENSEE adopt or use, without LICENSOR's prior written consent, the MARKS, or any mark which is confusingly similar to, or a colorable imitation of, the MARKS.

**Section 1.3 Assignment and Sublicenses.** LICENSEE and LICENSOR acknowledge and agree that, subject to the terms and conditions of this Agreement, LICENSEE has the right to license to other entities the right to use the Marks in any manner whatsoever. Notwithstanding the above provision, LICENSEE shall not grant sublicenses to any entity or individual to use the Marks in any manner whatsoever and shall not delegate any of its obligations or duties hereunder without the prior consent of LICENSOR. Violations of these provisions will be deemed to be a material breach of this Agreement, entitling the LICENSOR to terminate this Agreement.

**Section 1.4 Standards.** In the conduct of its business, LICENSEE shall maintain standards of quality that conform to the high-quality standards presently used by LICENSEE within the



TERRITORY, and the high-quality standards will be communicated in writing and/or verbally to LICENSEE at the inception of this Agreement and are subject to modifications by LICENSOR in its sole discretion, by the giving of fourteen (14) days notice.

### **Section 1.5 Quality Control.**

- 1.5.1 Inspection.** To ensure that the high-level quality standards hereinabove described are maintained, LICENSOR or its duly authorized representative, at LICENSOR's expense and on reasonable notice to LICENSEE, may inspect at any reasonable time on the premises of LICENSEE, the business operations of, and any materials, containers, wrappers, papers, and other items of the LICENSEE on which the MARKS appear.
- 1.5.2 Samples.** In order to ensure that the high-level quality standards hereinabove are maintained, LICENSEE shall furnish LICENSOR, or its designee, samples of representative uses of the MARKS as requested by LICENSOR or its designee.
- 1.5.3 Quality Control System.** In order to ensure that the high-level quality standards hereinabove described are maintained, LICENSEE shall continue to utilize the quality control system currently used by it, and with which LICENSOR is presently familiar. LICENSEE shall not change its quality control system without the consent of LICENSOR, which consent shall not be unreasonably withheld.
- 1.5.4 Records.** In order to ensure the that the high-level quality standards hereinabove described are maintained, LICENSEE shall continue to maintain those quality control records and reports currently produced and maintained by LICENSEE which also comport with the LICENSOR's standards, as set forth in Section 1.4 above. LICENSEE shall not change such records or reports without the prior consent of LICENSOR, which consent shall not be unreasonably withheld.

**Section 1.6 Labeling.** Whenever LICENSEE uses the MARKS in connection with the sale, distribution, advertisement or promotion of its business, or in any other manner in connection with the LICENSEE's business, LICENSEE shall cause appropriate legends as prescribed from time to time by LICENSOR to be placed adjacent to the MARKS. In using the MARKS, LICENSEE shall comply with all laws pertaining to service marks and trademarks in force at any time in the TERRITORY, including but not limited to, marking requirements.

### **Section 1.7 Protection of Rights.**

(a) LICENSEE agrees to assist LICENSOR in the protection and defense of any of LICENSOR's rights in the MARKS, in the filing and prosecution of any MARKS applications, renewals, and the like, in the recording of this Agreement and other relevant agreements, and in the doing of any other acts with respect to the MARKS, including the prevention of the use thereof by any unauthorized persons that, in the judgment of LICENSOR, may be necessary or desirable under any law, regulation or decree of the United States.

(b) LICENSEE shall notify LICENSOR promptly in writing of any infringements or imitations by others of the MARKS which come to LICENSEE's attention and LICENSOR shall have the sole right to determine whether or not any action shall be taken on any such infringements or imitations. If LICENSOR so desires, it may prosecute any claims or suits in its own name or join LICENSEE as a party thereto, all at LICENSOR's expense.

(c) LICENSEE shall not institute any suit or take any action on account of any actual or alleged infringements or imitations of the MARKS, and LICENSEE shall not have any rights against LICENSOR for damages or other remedy by reason of LICENSOR's failure to prosecute any alleged infringements or imitations by others of the MARKS.

**Section 1.8 Indemnification.** LICENSEE agrees to indemnify and hold harmless LICENSOR from any and all claims arising from the use by LICENSEE of the MARKS under this Agreement except that LICENSOR agrees to indemnify and hold harmless LICENSEE from any and all claims of trademark, trade dress or copyright infringement or claims of unfair competition directly caused by LICENSEE's use of the MARKS under this Agreement. The party against which the claims are made agrees to give the indemnifying party prompt notice of such claims and the indemnifying party has the right and obligation, at its sole expense, to defend such claims and shall be solely responsible for satisfying any monetary judgments awarded or any settlements entered into as a result of such claims. The party being indemnified may at its sole election participate in such defense at its own expense. In any event, the indemnifying party agrees to keep the other party fully informed regarding such claims.

**Section 1.9 Best Efforts.** LICENSEE shall use its best efforts to advertise, promote, market, and sell its products and services in the TERRITORY. LICENSOR shall assist LICENSEE in LICENSEE's marketing efforts, as deemed appropriate by the LICENSOR in its sole discretion.

**Section 1.10 Reporting.** LICENSEE shall maintain detailed, complete and accurate records to all sales of products and services under the MARKS. Within thirty (30) days after the end of each calendar quarter, LICENSEE, at the request of LICENSOR, shall deliver to LICENSOR a complete report of such sales. LICENSOR or its designated agent shall have the right to examine the books and records of LICENSEE relating to the sale of the products and services on reasonable notice during normal business hours.

**Section 1.11 Third Party Infringement.** In the event any third party violates LICENSOR's right, title and interest in and to the MARKS, LICENSEE shall cooperate fully with the LICENSOR to terminate such violations. LICENSOR shall have the right to take all reasonably necessary steps at its own expense to maintain the MARKS, to keep all reasonably necessary registrations in full force and effect, and protect LICENSEE against infringement of the MARKS by third parties; provided, however, that LICENSEE shall notify LICENSOR of any violations of LICENSOR's right, title or interest in the MARKS of which LICENSEE has notice. If LICENSOR takes any such legal action, LICENSEE shall have the right to participate as a party, and shall participate upon the request of LICENSOR. LICENSEE agrees to cooperate with LICENSOR in all respects and to provide LICENSOR with all assistance requested of it by LICENSOR in any such action. In any legal action, LICENSOR and LICENSEE shall each pay their own expenses and retain any costs or damages awarded to them therein. LICENSOR and LICENSEE possess the joint right to prosecute

and defend all suits or proceedings before governmental agencies which involve in any way validity of, title to, or infringement of the MARKS.

**Section 1.12 Amendment.**

(a) This Agreement may be amended, modified or extended to cover the inclusion of additional intellectual property of the type represented by the MARKS of which LICENSOR obtains ownership.

(b) No change, modification, or amendment of this Agreement shall be valid or binding on the parties unless such change or modification shall be in writing signed by the party or parties against whom the same is sought to be enforced.

**Section 1.13 Disclaimer of Partnership or Agency.** The relationship between LICENSOR and LICENSEE under this Agreement is solely that of seller and purchaser. Each of the parties is in no way the legal representative or agent of the other party for any purpose and shall have no power to assume or create in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of the other party.

**ARTICLE II**

[intentionally left blank]

**ARTICLE III**

**TERM and TERMINATION**

**Section 3.1 Term.** The term of this Agreement shall commence on the date first above written and shall continue until December 31, 2001, and shall be automatically renewed for successive one-year terms unless terminated by either LICENSEE or LICENSOR upon written notice at least ninety (90) days prior to the end of a term, or unless terminated by mutual, written agreement or pursuant to any of the following subparagraphs of Paragraph 3.2.

**Section 3.2 Termination.**

(a) Without prejudice to any other rights LICENSOR may have, LICENSOR may terminate this Agreement pursuant to subparagraph (c):

- (i) If LICENSEE shall be unable to pay its obligations when due, or shall make any assignment for the benefit of creditors, or shall file any petition under Chapter 11 or Title 11, United States Code, or shall file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy or insolvency shall be appointed for LICENSEE;

- (ii) If the quality of the LICENSED PRODUCTS OR SERVICES should become less than that as established or approved by LICENSOR,
- (iii) If LICENSEE shall fail to follow LICENSOR's instructions regarding appropriate use of the MARKS in connection with the LICENSED PRODUCTS OR SERVICES.

(b) In the event this Agreement is terminated for any reason stated above, LICENSEE, its receivers, representatives, trustees, agents, administrators, successors and/or assigns shall have no right to and shall not sell, exploit or in any way deal with, or in, any of the MARKS which are the subject of this Agreement or any carton, container, sign, packaging or wrapping material, advertising, promotional or display material pertaining thereto, except with and under the written consent and instructions of LICENSOR. Upon the termination of this Agreement by either of the parties for whatever cause, LICENSEE shall forthwith cease to use the MARKS in any manner whatsoever, and LICENSEE shall, within fifteen (15) days after such termination, destroy or sell to LICENSOR or its authorized representative at a mutually agreed upon price, any and all manuals, advertising, promotional or other materials bearing or referring to any of the MARKS within LICENSEE's possession, custody or control.

(c) In the event of breach by LICENSEE of any provision of this Agreement, LICENSOR shall give LICENSEE notice in writing to rectify the breach within thirty (30) days and if the breach is not rectified within such period, LICENSOR shall be entitled to exercise any remedies it may have hereunder, including but not limited to sue to enjoin such failure, sue for damages resulting from such failure, terminate this Agreement, or exercise all such remedies. If such breach is capable of being rectified but incapable, for whatever reason, of being rectified within the said thirty (30) days, LICENSOR shall delay taking action so long as LICENSEE shall have begun to rectify such breach within such period and thereafter proceeds diligently to complete the rectification of the breach and such breach is rectified within a reasonable period thereafter. The provision of this paragraph is in addition to, and not in limitation of, those rights and duties provided elsewhere in this Agreement and by law.

(d) Notwithstanding any provisions to the contrary herein, in the event of a change of control, in any manner, in the current ownership structure of the LICENSEE as of the date of this Agreement, LICENSOR shall have the option, in its sole discretion, to terminate this Agreement by the giving of ten (10) days written notice.

(e) This Agreement may be terminated at any time by mutual written agreement of the Parties.

#### ARTICLE IV

#### MISCELLANEOUS PROVISIONS

**Section 4.1 Validity of MARKS.** LICENSEE acknowledges the validity of, and LICENSOR'S exclusive ownership of, all right, title and interest, in and to the MARKS, and agrees that any use by LICENSEE of the MARKS shall inure solely to the benefit of LICENSOR.

The termination of this Agreement shall not affect the obligations of LICENSEE under this Paragraph.

**Section 4.2 Notices.** Any and all notices, elections, offers, acceptances, and demands permitted or required to be made under this Agreement shall be in writing, signed by the person giving such notice, election, offer, acceptance, or demand and shall be delivered personally, or sent by registered or certified mail, to the party, at its address on file with the other party or at such other address as may be supplied in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice, election, offer, acceptance, or demand.

**Section 4.3 Governing Laws.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Kentucky.

**Section 4.4 Integration.** This Agreement contains the entire agreement between LICENSOR and LICENSEE with respect to the subject matter hereof, and may not be amended, waived, changed, modified, extended, or rescinded except as provided expressly herein or by a written agreement duly executed by the parties hereto.

**Section 4.5 Force Majeure.** If the performance of any part of this Agreement by either party, or of any obligation under this Agreement, is prevented, restricted, interfered with, or delayed by reason of any cause beyond the reasonable control of the party liable to perform, unless conclusive evidence to the contrary is provided, the party so affected shall, on giving written notice to the other party, be excused from such performance to the extent of such prevention, restriction, interference, or delay, provided that the affected party shall use its reasonable best efforts to avoid or remove such causes of nonperformance and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of this Agreement may be required in order to arrive at an equitable solution.

**Section 4.6 Successors and Assigns.** This Agreement shall be binding on, and shall inure to the benefit of, the parties, their respective successors, successors in title, and assigns, and each party agrees, on behalf of it, its successors, successors in title, and assigns, to execute any instruments that may be necessary or appropriate to carry out and execute the purpose and intentions of this Agreement and hereby authorizes and directs its successors, successors in title, and assigns to execute any and all such instruments. Each and every successor in interest to any party, whether such successor acquires such interest by way of gift, devise, assignment, purchase, conveyance, pledge, hypothecation, foreclosure, or by any other method, shall hold such interest subject to all of the terms and provisions of this Agreement. The rights of the parties and their successors in interest shall be governed by the terms of this Agreement, and the right of any party or successor in interest to assign, sell, or otherwise transfer or deal with its interests under this Agreement shall be subject to the limitations and restrictions of this Agreement. This Agreement is not enforceable by the creditors of either party.

**Section 4.7 Remedies Cumulative.** The remedies of the parties under this Agreement are cumulative and shall not exclude any other remedies to which the party may be lawfully entitled.

cumulative and shall not exclude any other remedies to which the party may be lawfully entitled.

**Section 4.8 Severability.** In the event any provision, clause, sentence, phrase, or word hereof, or the application thereof in any circumstances, is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder hereof, or of the application of any such provision, sentence, clause, phrase, or word in any other circumstances.

**Section 4.9 Costs and Expenses.** Unless otherwise provided in this Agreement, each party shall bear all fees and expenses incurred in performing its obligations under this Agreement.

**Section 4.10 Incorporation of Exhibits.** EXHIBIT A attached is expressly made part of this Agreement, is incorporated by reference, and shall be given the same force and effect as if said Exhibit was included within the body of this Agreement.

**Section 4.11 Prior Agreements Superseded.** This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreement between them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, between the parties hereto relating to the subject matter of this Agreement, except those fully expressed herein.

**Section 4.12 No Implied Warranties.** Neither party makes any warranty or representation to the other except as specifically set forth herein.

**Section 4.13 Further Assurances.** Each party shall, upon request, make, execute and deliver such documents as shall be reasonably necessary or take such action as may be reasonably requested to fully implement and carry out the purposes of this Agreement.

**Section 4.14 Waiver.** Silence, acquiescence or inaction shall not be deemed a waiver of any right of either party hereunder, and a waiver shall only be effective if in writing signed by the party to be charged and such waiver shall not be construed to contain a continuing waiver of any other breaches of a same or similar type of breach specifically set forth therein.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CDIP LLC (LICENSOR)

By: Rebecca C. Reed

Name: Rebecca C. Reed

Title: Vice President

CHURCHILL DOWNS INCORPORATED (LICENSEE)

By: Rebecca C. Reed

Name: Rebecca C. Reed

Title: Senior Vice President

20132617