

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) October 19, 2004

CHURCHILL DOWNS INCORPORATED

(Exact name of registrant as specified in its charter)

KENTUCKY

0-1469

61-0156015

(State or other jurisdiction  
of incorporation)

(Commission  
File Number)

(IRS Employer  
Identification No.)

700 Central Avenue  
Louisville, Kentucky

40208

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code (502) 636-4400

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement.**

On October 19, 2004, Churchill Downs Incorporated (the "Company") acquired a total of 539,489 shares of its common stock from Brad M. Kelley, pursuant to a Stock Redemption Agreement between the Company and Mr. Kelley (the "Redemption Agreement") and a Purchase Agreement between Kelley Farms Racing, LLC and the Company (the "Kentucky Downs Purchase Agreement"), each dated October 19, 2004.

Pursuant to the Kentucky Downs Purchase Agreement, the Company sold a 19% interest in Kentucky Downs, LLC, the operator of Kentucky Downs racetrack, to Kelley Farms Racing, LLC, controlled by Mr. Kelley, along with debt owed to the Company by Kentucky Downs, LLC in the approximate amount of \$2.7 million and the Company's rights under a racetrack management agreement, in exchange for 86,886 shares of the Company's common stock valued at approximately \$3.2 million. Under the Kentucky Downs Purchase Agreement, if certain alternative gaming legislation is enacted or such gaming becomes legal within five years, Kelley Farms Racing, LLC will be required to pay the Company \$2 million as additional consideration for its acquisition of the Company's interest in Kentucky Downs, LLC, and if alternative gaming has commenced at Kentucky Downs racetrack within five years, Kelley Farms Racing, LLC will be required to pay the Company up to an additional \$12 million as additional consideration.

Under the Redemption Agreement, the Company redeemed 452,603 shares of its common stock from Mr. Kelley at a price of \$36.83 per share, which, after giving effect to the transactions under the Kentucky Downs Purchase Agreement, reduced Mr. Kelley's ownership of the Company's common stock to 4.9%. The shares redeemed under the Redemption Agreement were acquired by the Company in exchange for its subordinated unsecured convertible promissory note in the principal amount of \$16,669,379.87 (the "Note"). The Note matures on October 18, 2014, and may not be prepaid without Mr. Kelly's consent. The Note bears interest on an annualized basis based upon the dividends which Mr. Kelley would have received on the Company shares redeemed under the Redemption Agreement had such redemption not occurred. Upon maturity, the Company must pay the principal balance and unpaid accrued interest in any combination of cash and shares of the Company's common stock, based upon a price per share of \$36.83 (the "Conversion Price", subject to adjustments for stock splits and the like).

As the holder of the note, Mr. Kelley may declare the outstanding principal and unpaid interest on the Note immediately due and payable upon an event of default under the Note and so long as such condition exists, including default in the payment of the principal and unpaid accrued interest of the Note within fifteen days of when due and payable, the institution of certain bankruptcy or insolvency proceedings against the Company, the continuance for sixty days after the commencement of an action against the Company seeking any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar relief, and the failure of the Company to convert the Note in accordance with the procedures set forth in the Note (in which case the Note shall accrue interest at the maximum allowable rate until the date of conversion).

Mr. Kelley may convert the Note, in whole or in part and upon not less than seventy-five days notice to the Company, into the number of shares of the Company's common stock equal to the principal amount of the Note plus accrued and unpaid interest being converted divided by the Conversion Price. Under the terms of the Note, Mr. Kelley may exercise his conversion right if

his total beneficial ownership of the Company's common stock immediately after conversion would be less than 4.9% of the total number of issued and outstanding shares of common stock. If Mr. Kelley's post-conversion beneficial ownership of the Company's common stock would be 5.0% or greater, he may exercise the conversion right only if he has fully disclosed any and all information, has executed any documents, and has taken all steps required by any applicable gaming agency or regulatory authority for holders of 5.0% of the Company's common stock (the "Disclosure Requirements").

The Note may be immediately converted without prior notice, subject to Mr. Kelley's compliance with the Disclosure Requirements, in the event the Company establishes a record date for holders to receive certain Company distributions (other than a distribution payable only in cash), or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, or in the event of certain reorganizations, reclassifications, recapitalizations, transfers, consolidations or mergers or any voluntary or involuntary dissolution, liquidation or winding-up of the Company.

The Company agreed in the Redemption Agreement to register the shares of common stock issuable upon conversion of the Note on a Form S-3 Registration Statement with the Securities and Exchange Commission, subject to trading halts or blackout periods necessary to comply with applicable securities laws. In the event that Mr. Kelley has complied with the conversion procedures required by the Note, and due to applicable securities laws, he is unable to transfer the shares acquired upon conversion on his proposed transfer date, the Company may, at its option, redeem such shares based upon the closing price on the Nasdaq stock market on the date of conversion. If the Company does not redeem such shares, either the Company must hold harmless Mr. Kelley from any drop in the closing price of the Company's common stock between the conversion date and the proposed transfer date (the "Price Drop Obligation"), or Mr. Kelley must pay the Company the amount of any increase in the closing price of the common stock between the conversion date and the proposed transfer date. Due to the nature of the Price Drop Obligation, the Company is unable to determine the maximum potential amount of this future payment that the Company may be required to make. However, assuming the Note is converted in full for all 452,603 shares, each \$1.00 drop in share price between the conversion date and the proposed transfer date would increase the Price Drop Obligation by \$452,603.

Mr. Kelley agreed in the Redemption Agreement that neither he nor any of his affiliates will purchase the Company's common stock unless his total beneficial ownership of the Company's common stock immediately after such purchase would be less than 4.9% or prior to such purchase, he has complied with the Disclosure Requirements.

The Kentucky Downs Purchase Agreement, the Redemption Agreement and the Note are filed as Exhibits 10.1, 10.2 and 10.3 to this Current Report on Form 8-K, respectively, and are incorporated by reference herein.

#### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated by reference.

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#### **Item 3.02 Unregistered Sales of Equity Securities.**

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated by reference.

The Note was issued in a private placement and was not registered under the Securities Act of 1933 (the "Act"). The Note contains a legend stating that it may not be offered or sold in the absence of an effective registration statement under the Act, or an opinion of counsel satisfactory to the Company that such registration is not required under the Act, and that the Note is subject to transfer restrictions set forth in the Note. The Note was issued by the Company in reliance upon an exemption from registration set forth in Section 4(2) of the Act and Rule 506 promulgated under the Act. Mr. Kelley represented to the Company in the Redemption Agreement that, among other items, he was acquiring the Note for investment for his own account and not with a view to the resale or distribution thereof, and that he is an "accredited investor" within the meaning of Rule 501 promulgated under the Act.

#### **Item 7.01 Regulation FD Disclosure.**

On October 19, 2004, the Company issued a press release announcing the acquisition of 539,489 shares of its common stock from Mr. Kelley and related transactions. A copy of this press release is attached hereto as Exhibit 99 .1.

#### **Item 9.01 Financial Statements and Exhibits.**

- |      |                                                                                                                                |
|------|--------------------------------------------------------------------------------------------------------------------------------|
| (c)  | Exhibits                                                                                                                       |
| 10.1 | Purchase Agreement dated as of October 19, 2004 by and between Kelley Farms Racing, LLC and Churchill Downs Incorporated.      |
| 10.2 | Stock Redemption Agreement dated as of October 19, 2004 between Churchill Downs Incorporated and Brad M. Kelley.               |
| 10.3 | Convertible Promissory Note of Churchill Downs Incorporated in the principal amount of \$16,669,379.87 dated October 19, 2004. |
| 99.1 | Press release dated October 19, 2004 issued by Churchill Downs Incorporated, furnished pursuant to Item 7.01.                  |

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Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**CHURCHILL DOWNS INCORPORATED**

October 25, 2004

/s/ Michael E. Miller  
Michael E. Miller  
Executive Vice President and Chief Financial  
Officer  
(Principal Financial and Accounting Officer)

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the 19th day of October, 2004, by and between Kelley Farms Racing, LLC, a Florida limited liability company ("KFR LLC") and Churchill Downs Incorporated, a Kentucky corporation ("CDI").

WHEREAS, CDI is (i) the owner of twenty four (24) units of the membership interests of Kentucky Downs, LLC, a Kentucky limited liability company formerly known as BC Racing Group, LLC ("KD LLC") which currently operates a racetrack at a facility located at Interstate 65, Exit #2, Franklin, Kentucky (the "Facility"), (ii) a party to that certain Management Agreement dated July 15, 1997 by and among CDI, Turfway Park Racing Association, Inc. and BC Racing Group, LLC (the "Management Agreement") pursuant to which CDI has a right to receive the "Racetrack Management Fee" and, if alternative forms of gaming are commenced at the Facility, the "Alternative Gaming Management Fee" (both such terms are defined in Section 9 of the Management Agreement), and (iii) the holder of that certain promissory note of BC Racing Group, LLC dated July 11, 1997 in principal face amount of \$1,822,916.67 plus several other notes (and all interest accrued thereon) as are described on Exhibit A attached hereto (the "KD Notes");

WHEREAS, KFR LLC desires to acquire nineteen (19) of CDI's twenty four (24) units of KD LLC, a proportionate amount of the KD Notes, and CDI's rights and interest in the Management Agreement (collectively the "CDI Member Interest");

WHEREAS, KFR LLC and CDI agree that the CDI Member Interest has a value of \$3,200,000;

WHEREAS, Brad Kelley, an individual ("Kelley"), is the sole member of Bison Capital, LLC and Bison Capital, LLC is the sole member of KFR LLC;

WHEREAS, CDI desires to acquire a number of shares of CDI common stock held by Kelley necessary to reduce Kelley's percentage ownership of CDI's total issued and outstanding shares from 8.77% to 4.9%; and

WHEREAS, KFR LLC shall deliver 86,886 of Kelley's shares of CDI common stock (the "Kelley Shares") to CDI at Closing (a number of shares equal to \$3,200,000 divided by the average per share closing price on the Nasdaq national market of one share of CDI's common stock for the ten (10) trading days immediately prior to the Closing).

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Sale of Shares.** Subject to the terms and conditions of this Agreement, at the Closing (as defined below): (i) CDI will sell, transfer and convey the assets comprising the CDI Member Interest to KFR LLC and (ii) KFR LLC, on behalf of Kelley, will sell, transfer and convey the Kelley Shares to CDI and will assume all of CDI's obligations under the Management Agreement.

2. **Additional Consideration.** As additional consideration for the CDI Member Interest, if (i) Alternative Gaming Legislation (as defined below) is enacted by the Kentucky General Assembly and signed into law by the Governor of Kentucky or becomes law without the Governor's signature (or, if Alternative Gaming is legalized via litigation, as of the date of a favorable, non-appealable judicial decision allowing Alternative Gaming) and, in any case, not earlier than the date the Facility has the immediate right to be issued a gaming license under such legislation or court order, without any legal impediment beyond the control of the Facility to initiate operations (the "Effective Date") on or prior to the date which is five (5) years from the date of the Closing and (ii) other than the business then operated at the Facility, there is not another business eligible to host Alternative Gaming (as defined below) anywhere within an eighty (80) mile radius of the Facility, then, within ten (10) business days of the Effective Date, KFR LLC shall pay TWO MILLION DOLLARS (\$2,000,000) in immediately available funds to CDI (the "Effective Date Payment").

Further, as additional consideration for the CDI Member Interest, if, within five (5) years of the date of the Closing, any Alternative Gaming has commenced at the Facility (such commencement to be the date on which the first patron wages money on an Alternative Gaming activity, i.e., the first coin drop), then, within ten (10) business days after such date, KFR LLC shall pay TWELVE MILLION DOLLARS (\$12,000,000) to CDI in immediately available funds (the "Commencement Date Payment"), provided, however, if: the Alternative Gaming Legislation authorizes less than 750 electronic devices at the Facility, the Commencement Date Payment will be equal to the number of authorized electronic devices multiplied by \$16,000.

"Alternative Gaming" means any gaming activity other than bingo or pari-mutuel wagering on live (or replays of live) or simulcast horse racing.

"Alternative Gaming Legislation" means any legislation which authorizes Alternative Gaming at the Facility.

3. **Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Wyatt, Tarrant & Combs, LLP, in Louisville, Kentucky commencing at 10:00 a.m. local time no later than five (5) days following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby or such other date as the parties may mutually determine (the "Closing Date"); provided, however, that the Closing Date shall be no later than October 18, 2004. At the Closing, (i) KFR LLC shall deliver to CDI a certificate signed by Kelley, certifying that Kelley is the sole record and beneficial owner of the Kelley Shares and he has good, valid and marketable title to the Kelley Shares and that they are upon transfer to CDI free and clear of all claims, liens, pledges, restrictions and encumbrances whatsoever, in substantially the form attached hereto as Exhibit B; (ii) KFR LLC will execute and deliver to CDI a certificate certifying that the representations of KFR LLC set forth in Section 4 below are true, accurate and complete on and as of the Closing; (iii) CDI will execute and deliver to KFR, LLC a certificate certifying that the representations of CDI set forth in Section 5 below are true, accurate and complete on and as of the Closing; (iv) KFR LLC will deliver the Kelley Shares to CDI, including any certificate evidencing the shares, and also including the stock power attached hereto as Exhibit C executed by Kelley in favor of CDI; (v) CDI will deliver nineteen (19) units of the membership interests of KD LLC to KFR LLC, including any certificate evidencing such

membership interests and the transfer of membership interests instrument attached hereto as Exhibit D executed by CDI in favor of KFR LLC; (vi) CDI will deliver to KFR LLC resolutions of the members and management committee of KD LLC amending the KD Operating Agreement and approving the transaction contemplated by this Agreement substantially in the form as attached hereto as Exhibit E; (vii) CDI will deliver to KFR LLC a new promissory note issued by KD LLC and payable to KFR LLC in substantially the form attached hereto as Exhibit F; (viii) KFR LLC will deliver to CDI a new promissory note issued by KD LLC and payable to CDI in substantially the form attached hereto as Exhibit G; (ix) CDI will deliver a fully executed amendment to the Management

Agreement, in substantially the form attached hereto as Exhibit H; and (x) KFR LLC will execute and deliver the Pledge Agreement substantially in the form attached hereto as Exhibit I (the "Pledge Agreement").

4. **Representations and Warranties of KFR LLC.** KFR LLC represents and warrants to CDI that the statements contained in this Section 4 are true and correct as of the date hereof.

A. **Authority.** Upon the execution and delivery hereof by KFR LLC, this Agreement will constitute the legal, valid, and binding obligation of KFR LLC, enforceable against KFR LLC in accordance with its terms. KFR LLC has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement. Other than the consents (or waivers) of the other members of KD LLC which are required pursuant to the Operating Agreement of KD LLC prior to the transfer of the KD Units (the "KD Consents"), KFR LLC is not or will not be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

B. **No Conflict.** Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated hereby will violate or conflict with or constitute a default under any mortgage, indenture, contract, agreement, license, permit, instrument, or trust or any order or ruling of any governmental authority to which KFR LLC is a party or by which KFR LLC is bound.

C. **Investment Experience.** KFR LLC is organized in the State of Florida. Kelley is the sole member of Bison Capital, LLC and Bison Capital, LLC is the sole member of KFR LLC. KFR LLC acknowledges that it can bear the economic risk of this investment, and has such knowledge and experience in evaluating and investing in private placement transactions of securities and in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Securities.

D. **Accredited Investor.** KFR LLC is an "accredited investor" within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

E. **Receipt of Information.** KFR LLC believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the CDI Member Interest. KFR LLC further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the CDI Member Interest and the business, properties, and financial condition of KD LLC and the Company and to

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obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to KFR LLC or to which KFR LLC had access.

5. **Representations and Warranties of CDI.** CDI represents and warrants to KFR LLC that the statements contained in this Section 5 are true and correct as of the date hereof.

A. **Corporate Standing.** CDI is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky. CDI has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted, to execute, deliver and perform this Agreement.

B. **Authority.** Upon the execution and delivery hereof by CDI, this Agreement will constitute the legal, valid, and binding obligations of CDI, enforceable against CDI in accordance with its terms. CDI has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and to perform its obligations hereunder. Except for the approval of its Board of Directors, the consent of its primary lender, the KD Consents and any listing requirement of the Nasdaq national market, CDI is not and will not be required to obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

C. **No Conflict.** Neither the execution and delivery of this Agreement by CDI nor the consummation or performance of any of the transactions by CDI contemplated by this Agreement will give any person the right to prevent, delay, or otherwise interfere with any of the transactions pursuant to: (i) any provision of CDI's Articles of Incorporation or Bylaws; (ii) any resolution adopted by the board of directors or the stockholders of CDI; (iii) any legal requirement or order of any court or other governmental body to which CDI may be subject; or (iv) any contract to which CDI is a party or by which CDI may be bound.

D. **Good Title.** CDI is the sole record owner of the CDI Member Interest and has good and valid title to the assets comprising the CDI Member Interest. The CDI Member Interest is, and upon transfer to KFR LLC pursuant to this Agreement will be, free and clear of all claims, liens, pledges, restrictions and encumbrances whatsoever, other than any transfer restrictions under the Operating Agreement of KD LLC or under applicable securities laws.

6. **Pre-Closing Covenants.** The parties agree as follows with respect to the period between the date hereof and the Closing:

A. Each of the parties will use its reasonable best efforts to take all action and to do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction of the closing conditions set forth in Section 7 below).

B. Each of the parties will give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, consents, and approvals referred to in Section 4.A and Section 5.B above.

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C. Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transaction contemplated by this Agreement, including using commercially reasonable efforts to ensure timely satisfaction of the conditions precedent to each party's obligations hereunder. Neither party shall, without the prior written consent of the other party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

7. **Conditions to Obligation to Close.**

A. **Conditions to Obligation of CDI.** The obligation of CDI to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

- [1] CDI's Board of Directors shall have approved this Agreement and the transactions contemplated hereby;
- [2] CDI shall have received the consents and/or approvals described in Section 5.B;
- [3] the qualification or exemption of the sale and redemption of the Kelley Shares, and the sale, transfer and assignment of the CDI Member Interest, under any applicable securities laws and regulations;
- [4] no injunction, judgment, order, decree or ruling in effect preventing consummation of any of the transactions contemplated by this Agreement shall be in existence;
- [5] the representations and warranties of KFR LLC set forth in Section 4 shall be true, accurate and complete as of the Closing Date; and
- [6] the transaction contemplated by that certain Stock Redemption Agreement dated as of the date hereof by and between CDI and Kelly shall close simultaneously with the Closing hereof.

CDI may waive any condition specified in this Section 7.A if it executes a writing so stating at or prior to the Closing.

B. **Conditions to Obligation of KFR LLC.** The obligation of KFR LLC to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

- [1] no injunction, judgment, order, decree or ruling in effect preventing consummation of any of the transactions contemplated by this Agreement shall be in existence;

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- [2] the representations and warranties of CDI shall be true, accurate and complete as of the Closing Date; and
  - [3] the KD Amendment shall have been adopted so as to be effective as of the date of the Closing.

KFR LLC may waive any condition specified in this Section 7.B if KFR LLC executes a writing so stating at or prior to the Closing.

8. **Post-Closing Covenants.** With respect to the period from and after the Closing, the parties agree as follows:

A. KFR LLC shall use its influence to cause KD LLC to actively pursue passage of Alternative Gaming Legislation.

B. KFR LLC agrees to not purposefully delay the commencement of Alternative Gaming to a date beyond the five (5) year anniversary of the date of the Closing in order to avoid paying the amounts described above to CDI, and KFR LLC agrees not to take any action to cause KD LLC or the business then operating on the grounds of the Facility, to purposefully delay the commencement of Alternative Gaming in order to avoid such payments.

9. **Default.** In the event that KFR LLC defaults in the prompt payment and performance of all liabilities, obligations, covenants and duties owing by KFR LLC to CDI under and pursuant to this Agreement (the "Obligations"), including without limitation, all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) of CDI incurred in the enforcement or collection of the Obligations, then CDI's exclusive remedy shall be as set forth in the Pledge Agreement.

10. **Indemnification.** Each of CDI and KFR LLC shall indemnify, defend and hold harmless the other and such other party's respective directors, officers, employees, agents, successors and assigns from and against all losses, liabilities, damages, deficiencies, demands, claims, suits, actions, causes of action, judgments, settlements, assessments, costs of investigation and other expenses (including but not limited to fees, disbursements and other reasonable charges of attorneys, accountants, consultants, experts and other professional advisers, interest and penalties) based upon, arising out of or otherwise in respect of any breach or failure or nonfulfillment of any representation, warranty, covenant, undertaking or agreement of such party contained in this Agreement. Without limiting the generality of the foregoing, KFR LLC shall indemnify and hold CDI harmless from any and all liability related to or arising from the Management Agreement.

11. **Public Announcements.** Any public announcement or similar publicity with respect to this Agreement or the transaction contemplated hereby will be issued, if at all, at such time and in such manner as CDI and KFR LLC jointly determine, provided that CDI may make such disclosure, after consulting with KFR LLC, if such disclosure is required by applicable law or regulation, including the rules of the Nasdaq national market.

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12. **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand or registered United States mail (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

if to "CDI"

Churchill Downs Incorporated  
700 Central Avenue

Louisville, Kentucky 40208  
Attention: President  
Facsimile No.: (502) 634-4456

with a copy to:

Churchill Downs Incorporated  
700 Central Avenue  
Louisville, Kentucky 40208  
Attention: General Counsel  
Facsimile No.: (502) 636-4439

if to "KFR LLC"

Kelley Farms Racing, LLC  
c/o Greg Betterton  
981 Ridgewood Avenue, #101  
Venice, FL 34285  
Facsimile No.: (941) 483-4992

13. **Confidentiality.** Each party will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of such party to maintain in confidence, any written, oral, or other information obtained in confidence from another party in connection with this Agreement, unless (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated by this Agreement, or (c) the furnishing or use of such information is required by legal proceedings or law.

14. **Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants.

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15. **Further Assurances.** The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

16. **Entire Agreement and Modification.** This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by CDI and KFR, LLC.

17. **Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

18. **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Kentucky without regard to conflicts of laws principles.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

"CSI"

CHURCHILL DOWNS INCORPORATED

By: /s/ Rebecca C. Reed

Its: Secretary

"KFR LLC"

KELLEY FARMS RACING, LLC

By: /s/ Greg Betterton

Its: Manager

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Exhibit A

Schedule of KD Notes

As of September 30, 2004

<u>Note</u>	<u>Date</u>	<u>Principal</u>	<u>Accrued Interest (not yet added to principal)</u>
Note #1	09/2002	\$148,066.19	\$1,458.35
Note #2	09/2003	\$103,252.23	\$1,016.96
Note #3	09/2000	\$95,849.83	\$944.06
Note #4	09/2001	\$81,103.68	\$798.82
Note #5	initial	\$2,876,124.42	\$28,327.86
Note #6	09/2004	\$48,000.00	\$92.05
Totals		\$3,352,396.35	\$32,638.10

Total amount of principal owed to CDI as of September 30, 2004 = \$3,352,396.35

Total accrued interest as of September 30, 2004 = \$32,638.10

Total principal and interest owed to CDI as of September 30, 2004 = \$3,385,034.45

Daily interest at 4.75% on \$3,352,396.35 = \$436.27

Total amount of new Note payable to KFR LLC is 19/24 of \$3,385,034.45 which is \$2,679,818.94 (add \$345.38 for each day between 9/30/04 and the Closing, so if the Closing is October 18, 2004, the total would be \$2,679,818.94 plus (18 x \$345.38) or \$2,686,035.78).

Total amount of new Note payable to CDI is 5/24 of \$3,385,034.45 which is \$705,215.51 (add \$90.89 for each day between 9/30/04 and the Closing, so if the Closing is October 18, 2004, the total would be \$705,215.51 plus (18 x \$90.89) or \$706,851.53.

Exhibits to the Purchase Agreement have been intentionally omitted because they are not material. The registrant agrees to furnish such omitted exhibits supplementally to the Commission upon request.



## STOCK REDEMPTION AGREEMENT

THIS STOCK REDEMPTION AGREEMENT (this "Agreement") is made and entered into as of the 19th day of October, 2004, by and between Brad M. Kelley, an individual ("Stockholder") and Churchill Downs Incorporated, a Kentucky corporation ("CDI").

WHEREAS, Stockholder is the record and beneficial owner of 1,165,870 shares of the issued and outstanding common stock of CDI, which constitutes approximately 8.77% of CDI's total issued and outstanding shares of common stock;

WHEREAS, Stockholder is the sole member of Bison Capital, LLC, which is the sole member of Kelley Farms Racing LLC ("KFR LLC");

WHEREAS, CDI desires to acquire that number of shares of CDI common stock held by Stockholder necessary to reduce Stockholder's percentage ownership of CDI's total issued and outstanding shares from 8.77% to 4.9% (after taking into account the shares received by CDI in connection with that certain Purchase Agreement dated as of the date hereof by and between KFR LLC and CDI (the "Purchase Agreement"); and

WHEREAS, Stockholder shall permit the redemption of the number of shares necessary to reduce Stockholder's percentage ownership of CDI's issued and outstanding common stock to 4.9% (after taking into account the shares received by CDI in connection with the Purchase Agreement) in exchange for a convertible promissory note of CDI in substantially the form attached hereto as Exhibit A (the "Note").

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Redemption of Shares.** Subject to the terms and conditions of this Agreement, at the Closing (as defined below) CDI shall redeem that number of shares of common stock of CDI held by Stockholder (the "Shares") necessary to reduce Stockholder's percentage ownership of CDI's issued and outstanding common stock to 4.9% (after taking into account the shares received by CDI in connection with the Purchase Agreement) in exchange for the Note.

2. **Principal Amount of the Note; Conversion Price of Note.** The Note delivered by CDI to Stockholder at the Closing shall be the Note attached hereto as Exhibit A, provided that (i) such Note will be dated as of the date of the Closing, (ii) the Conversion Price (as defined below) will be designated in the body of the Note, and (iii) the principal amount of the Note will be designated on the face of the Note after being calculated pursuant to the following equation:  $(A \times B) - C = D$ , where: "A" is 539,489, "B" is the average per share closing price on the Nasdaq national market of one share of the Company's common stock for the ten (10) trading days immediately prior to the date of Closing, "C" is \$3,200,000.00 and "D" is the principal amount of the Note. The "Conversion Price" is equal to "B".

3. **Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Wyatt, Tarrant & Combs, LLP, in Louisville,

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Kentucky commencing at 10:00 a.m. local time no later than five (5) days following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby or such other date as the parties may mutually determine (the "Closing Date"); provided, however, that the Closing Date shall be no later than October 18, 2004. At the Closing, (i) Stockholder will execute and deliver to CDI a certificate certifying that the representations of Stockholder set forth in Section 4 below are true, accurate and complete on and as of the Closing; (ii) CDI will execute and deliver to Stockholder a certificate certifying that the representations of CDI set forth in Section 5 below are true, accurate and complete on and as of the Closing; (iii) Stockholder will deliver the Shares to CDI, including any certificate evidencing the shares and the execution and delivery to CDI of the stock power attached hereto as Exhibit B; and (iv) CDI will execute and deliver the Note to Stockholder.

4. **Representations and Warranties of Stockholder.** Stockholder represents and warrants to CDI that the statements contained in this Section 4 are true and correct as of the date hereof.

A. **Authority.** This Agreement constitutes the legal, valid, and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms. Upon the execution and delivery hereof by Stockholder this Agreement will constitute the legal, valid, and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms. Stockholder has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform his obligations under this Agreement.

B. **No Conflict.** Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated hereby will violate or conflict with or constitute a default under any mortgage, indenture, contract, agreement, license, permit, instrument, or trust or any order or ruling of any governmental authority to which Stockholder is a party or by which Stockholder is bound.

C. **Good Title.** Stockholder is the sole record and beneficial owner of the Shares and has good, valid and marketable title to the Shares. The Shares are, and upon transfer to CDI pursuant to this Agreement will be, free and clear of all claims, liens, pledges, restrictions and encumbrances whatsoever.

D. **Purchase Entirely for Own Account.** Stockholder understands that the Note, at the time of issuance may not be registered under the Securities Act on the grounds that the redemption provided for in this Agreement and the issuance of the Note hereunder is exempt from registration under the Securities Act and that the Company's reliance on such exemption is predicated on the Stockholders' representations set forth herein. This Agreement is made with Stockholder in reliance upon Stockholder's representations to Company, which by Stockholder's execution of this Agreement, Stockholder hereby confirms, that the Note will be acquired for investment for Stockholder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that Stockholder has no present intention of selling, granting any participation in, or otherwise distributing the same.

E. **Investment Experience.** Stockholder is domiciled in the State of Florida and acknowledges that he is able to fend for himself, can bear the economic risk of his investment,

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and has such knowledge and experience in evaluating and investing in private placement transactions of securities and in financial or business matters that he is capable of evaluating the merits and risks of the investment in the Note.

F. Accredited Investor. Stockholder is an “accredited investor” within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

G. Receipt of Information. Stockholder believes he has received all the information he considers necessary or appropriate for deciding whether to accept the Note.

5. **Representations and Warranties of CDI.** CDI represents and warrants to Stockholder that the statements contained in this Section 5 are true and correct as of the date hereof.

A. Corporate Standing. CDI is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky. CDI has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted, to execute, deliver and perform this Agreement.

B. Authority. This Agreement constitutes the legal, valid, and binding obligation of CDI, enforceable against CDI in accordance with its terms. Upon the execution and delivery hereof by CDI, this Agreement will constitute the legal, valid, and binding obligations of CDI, enforceable against CDI in accordance with its terms. CDI has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and to perform its obligations hereunder. Except for the approval of its Board of Directors, the consent of its primary lender, the KD Consents and any listing requirement of the Nasdaq national market, CDI is not and will not be required to obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

C. No Conflict. Neither the execution and delivery of this Agreement by CDI nor the consummation or performance of any of the transactions by CDI contemplated by this Agreement will give any person the right to prevent, delay, or otherwise interfere with any of the transactions pursuant to: (i) any provision of CDI’s Articles of Incorporation or Bylaws; (ii) any resolution adopted by the board of directors or the stockholders of CDI; (iii) any legal requirement or order of any court or other governmental body to which CDI may be subject; or (iv) any contract to which CDI is a party or by which CDI may be bound.

6. **Pre-Closing Covenants.** The parties agree as follows with respect to the period between the date hereof and the Closing:

A. Each of the parties will use its reasonable best efforts to take all action and to do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction of the closing conditions set forth in Section 7 below).

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B. Neither Stockholder nor any affiliate of Stockholder shall purchase any additional shares of CDI’s common stock without first receiving the express written consent of CDI.

C. Each of the parties will give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, consents, and approvals required by this Agreement.

D. Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transaction contemplated by this Agreement, including using commercially reasonable efforts to ensure timely satisfaction of the conditions precedent to each party’s obligations hereunder. Neither party shall, without the prior written consent of the other party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

7. **Conditions to Obligation to Close.**

A. Conditions to Obligation of CDI. The obligation of CDI to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

- [1] CDI’s Board of Directors shall have approved this Agreement and the transactions contemplated hereby;
- [2] CDI shall have received the consents and/or approvals described in Section 5.B;
- [3] the qualification or exemption of the sale and redemption of the Shares, and the issuance of the Note, under any applicable securities laws and regulations;
- [4] no injunction, judgment, order, decree or ruling in effect preventing consummation of any of the transactions contemplated by this Agreement shall be in existence;
- [5] the representations and warranties of Stockholder set forth in Section 4 shall be true, accurate and complete as of the Closing Date; and
- [6] the transactions contemplated by the Purchase Agreement shall have been consummated simultaneously with the Closing.

CDI may waive any condition specified in this Section 7.A if it executes a writing so stating at or prior to the Closing.

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B. Conditions to Obligation of Stockholder. The obligation of Stockholder to consummate the transactions to be performed by him in connection with the Closing is subject to satisfaction of the following conditions:

- [1] no injunction, judgment, order, decree or ruling in effect preventing consummation of any of the transactions contemplated by this Agreement shall be in existence;

- [2] the representations, warranties of CDI shall be true, accurate and complete as of the Closing Date; and
- [3] the transactions contemplated by the Purchase Agreement shall have been consummated simultaneously with the Closing.

Stockholder may waive any condition specified in this Section 7.B if Stockholder executes a writing so stating at or prior to the Closing.

**8. Post-Closing Covenants.** With respect to the period from and after the Closing, the parties agree as follows:

A. Neither Stockholder nor any affiliate of Stockholder shall purchase any additional shares of CDI's common stock unless (i) Stockholder's total beneficial ownership of the Company's common stock immediately after such purchase would be less than 4.9% of the Company's then total number of issued and outstanding shares of common stock, or (ii) prior to such purchase, Holder has fully disclosed any and all information, has executed any documents, and has taken all other steps, required by any applicable gaming agency or regulatory authority for holders of 5.0% or more of the Company's common stock, and agrees to make all such information available in the future and to comply with any request of the Company or any applicable gaming agency or regulatory authority or otherwise fully complies with (on a timely basis) the requirements of such applicable gaming agency or regulatory authority.

B. Stockholder shall use his influence to cause KFR LLC to actively pursue passage of Alternative Gaming Legislation (as such term is defined in the Purchase Agreement).

C. Stockholder agrees to not purposefully delay the commencement of Alternative Gaming (as such term is defined in the Purchase Agreement) to a date beyond the five (5) year anniversary of the date of the Closing in order to avoid paying the Effective Date Payment and/or the Commencement Date Payment (each as defined in the Purchase Agreement) to CDI, and Stockholder agrees not to take any action to cause Kentucky Downs LLC or the business then operating on the grounds of the Facility (as defined in the Purchase Agreement), to purposefully delay the commencement of Alternative Gaming.

D. Within sixty (60) days of the date hereof, CDI agrees to cause the Shares into which the Note is convertible to be registered for secondary offering purposes with the Securities and Exchange Commission ("SEC") on a Form S-3 Registration Statement. Stockholder acknowledges that Stockholder's ability to sell the Shares under such registration statement may thereafter be subject to trading halts or blackout periods imposed by CDI which CDI or its

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counsel may deem necessary or appropriate to comply with applicable securities laws. CDI acknowledges and agrees that CDI's commitment to deliver Shares upon conversion of the Note which are immediately transferable (subject only to compliance with all applicable securities laws and regulations) is a material condition of Stockholder entering into this Agreement. CDI further acknowledges that its failure to deliver immediately transferable Shares will trigger the Redemption Option (as defined in the Note). If CDI fails to exercise the Redemption Option, Stockholder could suffer a substantial financial loss or gain during the Interim Period (as defined in the Note). As set forth in the Note, in such an event, CDI will hold Stockholder harmless from a loss and Stockholder will pay CDI the amount of any gain.

9. **Indemnification.** Each of CDI and Stockholder shall indemnify, defend and hold harmless the other and such other party's respective directors, officers, employees, agents, successors and assigns from and against all losses, liabilities, damages, deficiencies, demands, claims, suits, actions, causes of action, judgments, settlements, assessments, costs of investigation and other expenses (including but not limited to fees, disbursements and other reasonable charges of attorneys, accountants, consultants, experts and other professional advisers, interest and penalties) based upon, arising out of or otherwise in respect of any breach or failure or nonfulfillment of any representation, warranty, covenant, undertaking or agreement of such party contained in this Agreement.

10. **Public Announcements.** Any public announcement or similar publicity with respect to this Agreement or the transaction contemplated hereby will be issued, if at all, at such time and in such manner as CDI and Stockholder jointly determine, provided that CDI may make such disclosure, after consulting with Stockholder, if such disclosure is required by applicable law or regulation, including the rules of the Nasdaq national market.

11. **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand or registered United States mail (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

if to "CDI"

Churchill Downs Incorporated  
700 Central Avenue  
Louisville, Kentucky 40208  
Attention: President  
Facsimile No.: (502) 634-4456

with a copy to:

Churchill Downs Incorporated  
700 Central Avenue  
Louisville, Kentucky 40208

if to "Stockholder"

Brad Kelley  
c/o Greg Betterton, Esq.  
981 Ridgewood Avenue, #101  
Venice, FL 34285  
Facsimile No.: (941) 483-4992

12. **Confidentiality.** Each party will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of such party to maintain in confidence, any written, oral, or other information obtained in confidence from another party in connection with this Agreement, unless (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated by this Agreement, or (c) the furnishing or use of such information is required by legal proceedings or law.

13. **Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants.

14. **Further Assurances.** The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

15. **Entire Agreement and Modification.** This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by CDI and Stockholder.

16. **Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

17. **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Kentucky without regard to conflicts of laws principles.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

"CDI"

CHURCHILL DOWNS INCORPORATED

By: Rebecca C. Reed

Its: Secretary

"STOCKHOLDER"

/s/ Brad M. Kelley  
Brad M. Kelley

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Exhibits to the Stock Redemption Agreement have been intentionally omitted because they are not material. The registrant agrees to furnish such omitted exhibits supplementally to the Commission upon request.

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THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). THIS NOTE MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT. THIS NOTE IS SUBJECT TO CERTAIN TRANSFER RESTRICTIONS SET FORTH IN SECTION 12 OF THIS NOTE.

CHURCHILL DOWNS INCORPORATED  
 CONVERTIBLE PROMISSORY NOTE

\$16,669,379.87

Louisville, Kentucky  
 October 19, 2004

Churchill Downs Incorporated, a Kentucky corporation (the "Company"), the principal office of which is located at 700 Central Avenue, Louisville, Kentucky 40208, for value received, hereby promises to pay to the order of Brad M. Kelley, an individual, whose principal residence is located at 100 Gulf Blvd., Boca Grande, Florida 33921 ("Holder"), the sum of Sixteen Million Six Hundred Sixty-Nine Thousand Three Hundred Seventy-Nine Dollars and 87/100 (\$16,669,379.87), or such lesser amount as shall then equal the outstanding principal balance hereof and any unpaid accrued interest hereon, as set forth below, on the date which is ten (10) years from the date hereof (the "Maturity Date"). The Company shall have no right to prepay or transfer this note prior to the Maturity Date without the consent of the Holder. The Company shall, on the Maturity Date, pay the principal balance hereof and any unpaid accrued interest hereon in any combination of cash and shares of the Company's common stock (with shares of the Company's common stock to be valued for such purposes at the Conversion Price).

Payment for all amounts due hereunder shall be made by mail to the Holder c/o Holder's attorney, Greg Betterton, Esq., 981 Ridgewood Avenue, #101, Venice, Florida 34285. This Note is issued pursuant to that certain Stock Redemption Agreement dated as of the date hereof by and among the Company and the Holder, as the same may from time to time be amended, modified or supplemented (the "Redemption Agreement").

The following is a statement of the rights of the Holder and the conditions to which this Note is subject, and to which the Holder, by the acceptance of this Note, agrees:

1. *Definitions.* Unless specifically defined herein, capitalized terms shall have the meaning given them in the Redemption Agreement. As used herein, the following terms, unless the context otherwise requires, have the following meanings:

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- (i) The "Company" includes any entity which shall succeed to or assume the obligations of the Company under this Note.
- (ii) "Holder," when the context refers to a holder of this Note, shall mean any person who shall at the time be the registered holder of this Note.
- (iii) "Conversion Price" means \$36.83.

2. *Interest.* The Company shall pay interest on the principal amount of the Note on an annual basis if, and only if, the Company declares and pays a cash dividend on its common stock for such year. Within ten (10) business days of paying any cash dividend on its common stock, the Company will pay to the Holder as interest an amount equal to what Holder would have received as a dividend on the shares of the Company's common stock redeemed pursuant to the Redemption Agreement. All payments made on this Note shall be applied, at the option of the Holder, first to collection costs, if any, then to accrued interest and then to principal. After maturity or in the event of default, interest shall continue to accrue on the Note at the rate set forth above. Notwithstanding anything in this Note to the contrary, the interest rate charged hereon shall not exceed the maximum rate allowable by applicable law. If any stated interest rate herein exceeds the maximum allowable rate, then the interest rate shall be reduced to the maximum allowable rate, and any excess payment of interest made by the Company at any time shall be applied to the unpaid balance of any outstanding principal of this Note.

3. *Events of Default.* If any of the events specified in this Section 3 shall occur (herein individually referred to as an "Event of Default"), the Holder of the Note may, so long as such condition exists, declare the entire outstanding principal of this Note and unpaid accrued interest thereon immediately due and payable, by notice in writing to the Company:

- (i) Default in the payment of the principal and unpaid accrued interest of this Note within fifteen (15) days of when due and payable; or

- (ii) The institution by the Company of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer to consent seeking reorganization or release under the federal Bankruptcy Act, or any other applicable federal or state law, or the consent by it to the filing of any such petition or the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Company, or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the taking of corporate action by the Company in furtherance of any such action; or

- (iii) If, within sixty (60) days after the commencement of an action against the Company (and service of process in connection therewith on the Company) seeking any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been resolved in favor of the Company or all

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orders or proceedings thereunder affecting the operations or the business of the Company stayed, or if the stay of any such order or proceeding shall thereafter be set aside, or if, within sixty (60) days after the appointment without the consent or acquiescence of the Company of any trustee, receiver or liquidator of the Company or of all or any substantial part of the properties of the Company, such appointment shall not have been vacated.

- (iv) Failure of Company to convert in accordance with the procedure set forth herein, in which case this Note shall accrue interest at the maximum allowable rate until the date of conversion.

#### 4. Conversion.

(i) *Optional Conversion.* Upon delivery of the Conversion Notice attached hereto to the Company, the Holder has the right, at the Holder's option, at any time prior to payment in full of the principal balance of and accrued interest on this Note, to convert this Note, in accordance with the provisions of this Section 4, in whole or in part (if in part, in principal amounts of no less than \$100,000, and in \$100,000 increments), into shares of the Company's common stock, which are fully paid, nonassessable, fully registered and immediately transferable, subject only to compliance with all applicable securities laws and regulations. This Note, or any portion thereof, will be convertible into that number of fully paid and nonassessable shares of the Company's common stock equal to (i) the principal amount of the Note being converted, together with all accrued but unpaid interest thereon, divided by (ii) the Conversion Price. Provided, however, Holder will only be able to convert the Note, or any portion thereof, into shares of the Company's common stock if Holder's total beneficial ownership of the Company's common stock immediately after such conversion would be less than 4.9% of the Company's then total number of issued and outstanding shares of common stock (nothing herein shall prevent Holder from entering into an agreement to sell all or a portion of the shares into which this Note would convert as long as the closing on any such sale occurs simultaneously with the conversion of the Note so that Holder's percentage ownership of Company's common stock never surpasses 4.9%). Notwithstanding the immediately preceding sentence, if Holder's post-conversion beneficial ownership of the Company's common stock would be five percent (5.0%) or greater, Holder may convert the Note, or any portion thereof, if (and only if) Holder has fully disclosed any and all information, has executed any documents, and has taken all other steps, required by any applicable gaming agency or regulatory authority for holders of 5.0% or more of the Company's common stock (the "Disclosure Requirements"), and agrees to make all such information available in the future and to comply with any request of the Company or any applicable gaming agency or regulatory authority or otherwise fully complies with (on a timely basis) the requirements of such applicable gaming agency or regulatory authority.

(ii) *Conversion Procedure.* Before the Holder shall be entitled to convert this Note into shares of the Company's common stock, Holder shall deliver the Conversion Notice attached hereto to Company not less than seventy-five (75) days prior to the date Holder desires to convert this Note. Such Conversion Notice shall be delivered by mail, postage prepaid, to the Company at its principal corporate office, and shall contain a statement of the election of Holder to

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convert the Note, or a portion of the Note as well as the date the Holder desires such conversion to be effective. Such conversion shall be deemed to have been made immediately prior to the close of business on the later of (a) the date specified in such notice (which date shall be not less than seventy five (75) days from the date Company receives such notice) or (b) the date of surrender of this Note or (c) the date Holder has demonstrated compliance with the Disclosure Requirements, and the person or persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares as of such date.

As promptly as practicable after the conversion of this Note, the Company at its expense will issue and deliver to the Holder of this Note a certificate or certificates for the number of full shares of the Company's registered common stock issuable upon such conversion.

If Holder has complied with the provisions of this Note as it relates to conversion of this Note and, despite such compliance by Holder, it is apparent to Company that Holder will be unable to convert this Note into fully registered and immediately transferable shares of the Company's common stock on the date Holder has specified in the Transfer Notice ("Holder's Desired Transfer Date") because of Company's actions, inactions or efforts to comply with applicable securities laws, then Company shall have the option of allowing Holder to convert this Note (or a portion hereof) so that Company can immediately purchase and redeem the shares issued by Company to Holder upon conversion of this Note (or a portion hereof) at a per share price equal to the per share closing price on the Nasdaq national market ("Closing Price") on the day of conversion (the "Redemption Option"). Upon exercising the Redemption Option, the principal amount of the Note will be reduced accordingly. If Company does not elect to exercise the Redemption Option, Company will hold Holder harmless from any drop in the Closing Price between the Holder's Desired Transfer Date and the date Holder is able to convert this Note into fully registered and immediately transferable shares of the Company's common stock (the "Interim Period"). Similarly, if during the Interim Period, the Closing Price increases, Holder will pay the amount of the increase to Company.

(iii) *Mechanics and Effect of Conversion.* No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal and interest that is not so converted. Upon conversion of the entire outstanding principal amount of and all accrued interest on this Note, the Company shall be forever released from all its obligations and liabilities under this Note.

#### 5. Conversion Price Adjustments.

(i) *Adjustments for Splits and Subdivisions.* In the event the Company should at any time or from time to time after the date of issuance hereof fix a record date for the effectuation of a split or subdivision of the outstanding capital stock of the Company or the determination of holders of capital stock entitled to receive a dividend or other distribution payable in additional shares of capital stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of capital stock (hereinafter referred to as "Share

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Equivalents") without payment of any consideration by such holder for the additional capital stock or the Share Equivalents (including the additional shares of capital stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distributions, split or subdivision if no record date is fixed), the Conversion Price of this Note shall be appropriately decreased so that the number of shares issuable upon conversion of this Note shall be increased in proportion to such increase of outstanding shares of capital stock.

(ii) *Adjustments for Reverse Splits.* If the number of shares of Company's capital stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Company's capital stock, then, following the record date of such combination, the Conversion Price for this Note shall be appropriately increased so that the number of shares issuable on conversion hereof shall be decreased in proportion to such decrease in outstanding shares.

#### 6. Notices of Record Date, etc. In the event of:

(i) Any taking by the Company of a record of the holders of any class of securities of the Company for the purpose of determining the holders thereof who are entitled to receive any distribution (other than a distribution payable only in cash) or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right; or

(ii) Any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any transfer outside of the regular course of business of all or substantially all of the assets of the Company to any other person (other than a subsidiary of the Company) or any consolidation or merger involving the Company (other than a merger with a subsidiary of the Company); or

(iii) Any voluntary or involuntary dissolution, liquidation or winding-up of the Company,

the Company will mail to the holder of this Note at least ten (10) days prior to the earliest date specified therein, a notice specifying: (a) the date on which any such record is to be taken for the purpose of such distribution or right, and the amount and character of such distribution or right; and (b) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding-up is expected to become effective and the record date (if any) for determining shareholders entitled to vote thereon. In the event Company delivers the notice described in this Section 6, Holder may demand immediate conversion of this Note without regard to the notice provisions and time periods set forth in Section 4 (ii); provided that Holder must still comply with the Disclosure Requirements if Holder's post-conversion beneficial ownership of the Company's common stock will equal or exceed 5.0%.

7. *Reservation of Shares Issuable Upon Conversion.* The Company covenants that it shall reserve from its authorized and unissued shares of common stock, a sufficient number of shares

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to effect the conversion of the entire outstanding principal amount of this Note. The Company further covenants that all shares that may be issued upon the exercise of rights represented by this Note will, when issued in accordance with the terms hereof, be fully paid, nonassessable, fully registered and immediately transferable (subject only to compliance with all applicable securities laws and regulations), free of preemptive rights and free from all taxes, liens and charges in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously or otherwise specified herein). The Company agrees that its issuance of this Note shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for shares upon the conversion of this Note.

8. *Prepayment.* The Company shall have no right to prepay this Note without the consent of Holder, who may grant or deny such consent in its sole discretion.

9. *Note is Subordinate to Company's Credit Facilities and other Senior Long Term Debt.* Holder acknowledges that Company has existing credit facilities with commercial lenders and other senior long term debt with institutional investors and that, prior to the Maturity Date, Company may enter into amendments thereto or into new credit facilities with commercial lenders or into new other senior long term debt with institutional investors (collectively, the "Credit Facilities and Other Senior Long Term Debt"). Notwithstanding any contrary statement contained in this Note, any and all payments arising on account of any obligation arising from or in connection with this Note (whether of principal, interest or otherwise) shall be, at all times, subordinate to the payment of amounts of any kind or nature, present or future, which are owed by Company pursuant to or arising from the Credit Facilities and Other Senior Long Term Debt. By signing below, Holder hereby irrevocably subordinates and postpones the payment and the time of payment of all payments arising on account of any obligation arising from or in connection with this Note and all claims and demands arising therefrom to the Credit Facilities and Other Senior Long Term Debt and directs that the Credit Facilities and Other Senior Long Term Debt be paid in full before any amounts be paid pursuant to this Note, provided such subordination shall not restrict Holder's right to convert.

10. *Assignment.* Subject to the restrictions on transfer described in Section 12 below, the rights and obligations of the Company and the Holder of this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

11. *Waiver and Amendment.* Any provision of this Note may be amended, waived or modified only upon the written consent of both the Company and the Holder.

12. *Transfer of this Note; Compliance with Securities Laws.* The Holder of this Note, by acceptance hereof, acknowledges that this Note and the shares to be issued upon conversion hereof are being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment. This Note is not transferable without the express written consent of Company. Further, if Company consents to any transfer proposed by Holder, such transfer must be in compliance with all applicable securities laws and regulations as determined in the sole discretion of Company's legal counsel.

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13. *Notices.* Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt), or (ii) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth herein. Any party hereto may by notice so given change its address for future notice hereunder.

14. *No Shareholder Rights.* Nothing contained in this Note shall be construed as conferring upon the Holder or any other person the right to vote or to consent to or receive notice as a shareholder in respect of meetings of shareholders for the election of directors of the Company or any other matters or any rights whatsoever as a shareholder of the Company.

15. *Waivers.* The Company hereby waives presentment, demand, protest and notice of dishonor and protest, and also waives all other exemptions; and agrees that extension or extensions of the time of payment of this Note or any installment or part thereof may be made before, at or after maturity by agreement by the Holder. Upon default hereunder the Holder shall have the right to convert this Note without regard to the notice provisions and time periods set forth in Section 4 (ii); provided that Holder must still comply with the Disclosure Requirements if Holder's post-conversion ownership of the Company's common stock will equal or exceed 5.0%. The Company shall pay to the Holder, upon demand, all costs and expenses, including, without limitation, attorneys' fees and legal expenses, that may be incurred by the Holder in connection with the enforcement of this Note, including expenses, if any, incurred by Holder related to the registration of shares on conversion.

16. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, excluding that body of law relating to conflict of laws.

17. *Heading; References.* All headings used herein are used for convenience only and shall not be sued to construe or interpret this Note. Except where otherwise indicated, all references herein to Sections refer to Sections hereof.

IN WITNESS WHEREOF, the Company has caused this Convertible Promissory Note to be issued as of this the 19th day of October, 2004.

“Company”

CHURCHILL DOWNS INCORPORATED

By: /s/ Michael W. Anderson

Its: VP Finance & Treasurer

“Holder”

/s/ Brad M. Kelley  
Brad M. Kelley

NOTICE OF CONVERSION

(To Be Signed Only Upon Conversion of Note)

TO CHURCHILL DOWNS INCORPORATED

The Note attached to this Notice of Conversion is in the principal amount of \$\_\_\_\_\_ and is dated September \_\_\_\_, 2004. The undersigned, the Holder of the attached Note, hereby surrenders such Note for conversion into shares of the common stock of Churchill Downs Incorporated, to the extent of \$\_\_\_\_\_ unpaid principal amount and accrued interest of such Note, and requests that the certificates for such shares be issued in the name of, and delivered to, Brad M. Kelley, whose address is \_\_\_\_\_. The undersigned requests that the conversion be effective as of \_\_\_\_\_, 20\_\_ (which date must be no less than the date which is sixty (60) days after the date this Notice of Conversion is delivered to Churchill Downs Incorporated, except as provided in Section 6 of the Note) and further acknowledges that such effective date is subject to the terms of the Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respect to name of Holder as specified on the face of the Note)

\_\_\_\_\_  
Address





FOR IMMEDIATE RELEASE

Contact: Mike Ogburn  
 Churchill Downs Incorporated  
 (502) 636-4415 (office)  
 (502) 262-0224 (mobile)  
[mogburn@kyderby.com](mailto:mogburn@kyderby.com)

**CHURCHILL DOWNS INCORPORATED SELLS 19-PERCENT STAKE IN KENTUCKY DOWNS,  
 REDEEMS SHARES OF STOCK**

**LOUISVILLE, Ky. (Oct. 19, 2004)** — Churchill Downs Incorporated (Nasdaq: CHDN) (“CDI” or the “Company”) today announced that it sold a 19-percent stake in Kentucky Downs, including debt owed to CDI, to Kelley Farms Racing. As part of the terms of the transaction, former CDI board member Brad M. Kelley exchanged shares of CDI stock valued at \$3.2 million for the stake. The sale reduces CDI’s ownership of Kentucky Downs to a total of 5 percent.

Thomas H. Meeker, CDI’s president and chief executive officer, said the Company’s divesture was in the best interests of both parties.

“CDI sold a portion of its Kentucky Downs ownership for fair value which includes a contingency payout should the facility be approved for alternative gaming legislation,” said Meeker. “The sale also afforded us the opportunity to monetize a currently non-productive asset. For Brad Kelley, the transaction increased his stake in a racetrack that he has sought additional ownership in for some time. He is a gifted businessman from the Franklin, Ky. area who is well-suited to advance the strategic interests of Kentucky Downs,” said Meeker.

In addition, as part of the transaction, the Company redeemed an additional amount of CDI stock from Kelley in exchange for a convertible promissory note. In total, CDI redeemed 539,489 shares of Company stock valued at \$19.9 million, reducing Kelley’s ownership of CDI stock to 4.9 percent.

Churchill Downs Incorporated, headquartered in Louisville, Ky., owns and operates world-renowned horseracing venues throughout the United States. The Company’s seven racetracks in California, Florida, Illinois, Indiana, Kentucky and Louisiana host 123 graded-stakes events and many of North America’s most prestigious races, including the Kentucky Derby and Kentucky Oaks, Hollywood Gold Cup and Arlington Million. CDI racetracks have hosted nine Breeders’ Cup World Thoroughbred Championships – more than any other North American racing company. CDI also owns off-track betting facilities and has interests in various television production, telecommunications and racing services companies that support CDI’s network of simulcasting and racing operations. CDI trades on the Nasdaq National Market under the symbol CHDN and can be found on the Internet at [www.churchilldownsincorporated.com](http://www.churchilldownsincorporated.com).

Kentucky Downs, formerly known as Dueling Grounds Race Course, offers a short annual race meet and year-round simulcast wagering. The track is located on the Kentucky and Tennessee border, about 40 miles from Nashville. A distinctive feature of the facility is that all of its racing is conducted on a European-style 1 5/16-mile turf course. CDI has held a minority interest in Kentucky Downs since 1997.

— MORE —

700 CENTRAL AVENUE o LOUISVILLE, KY 40208 o P: (502) 636-4400 o [churchilldownsincorporated.com](http://churchilldownsincorporated.com)

Churchill Downs Incorporated Sells 19-Percent Stake in Kentucky Downs

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*This news release contains forward-looking statements made pursuant to the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. The reader is cautioned that such forward-looking statements are based on information available at the time and/or management’s good faith belief with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in the statements. Forward-looking statements speak only as of the date the statement was made. We assume no obligation to update forward-looking information to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information. Forward-looking statements are typically identified by the use of terms such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “predict,” “project,” “should,” “will,” and similar words, although some forward-looking statements are expressed differently. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that such expectations will prove to be correct. Important factors that could cause actual results to differ materially from our expectations include: the effect of global economic conditions; the effect (including possible increases in the cost of doing business) resulting from future war and terrorist activities or political uncertainties; the economic environment; the impact of increasing insurance costs; the impact of interest rate fluctuations; the financial performance of our racing operations; the impact of gaming competition (including lotteries and riverboat, cruise ship and land-based casinos) and other sports and entertainment options in those markets in which we operate; costs associated with our efforts in support of alternative gaming initiatives; costs associated with our Customer Relationship Management initiative; a substantial change in law or regulations affecting our pari-mutuel and gaming activities; a substantial change in allocation of live racing days; litigation surrounding the Rosemont, Illinois, riverboat casino; changes in Illinois law that impact revenues of racing operations in Illinois; a decrease in riverboat admissions subsidy revenue from our Indiana operations; the impact of an additional Indiana racetrack and its wagering facilities near our operations; our continued ability to effectively compete for the country’s top horses and trainers necessary to field high-quality horse racing; our continued ability to grow our share of the interstate simulcast market; our ability to execute our acquisition strategy and to complete or successfully operate planned expansion projects; our ability to adequately integrate acquired businesses; market reaction to our expansion projects; any business disruption associated with our facility renovations; the loss of our totalisator companies or their inability to keep their technology current; our accountability for environmental contamination; the loss of key personnel and the volatility of our stock price.*

