

THE INDIANA  
HORSEMEN'S BENEVOLENT & PROTECTIVE ASSOCIATION  
BENEFIT FUND AGREEMENT

THIS FUND AGREEMENT, is made by and between the Indiana Horsemen's Benevolent & Protective Association, Inc.. ("hereinafter referred to as the Association"), and the Fund Committee (together with any successor and/or additional Fund Committee persons that may be appointed, hereinafter collectively referred to as the Fund Committee").

BACKGROUND

Pursuant to Indiana Code 4-31-5-1 et seq., Hoosier Park, L. P., and Indiana limited partnership (" the Operators") hold licenses to conduct thoroughbred horse racing with pari-mutuel wagering at Hoosier Park (the "Track")

This fund is to be funded exclusively from the purses awarded at the Track (The percentage of purses contributed to the Fund from time to time will be established by the Association.) The entire funds of the Fund are to be used to provide accident, health, burial, emergency, and similar benefits in such form and manner and to such individuals associated with the Track as the Fund Committee, in their discretion, may from time to time determine. Under no circumstances shall the Fund Committee provide benefits to any employee of the Operators or the Association in their capacity as such or any member of the Association in his capacity as such; however the Fund Committee may provide benefits to an otherwise eligible individual who happens to be a member of the Association.

ESTABLISHMENT OF BENEVOLENT FUND

In consideration of the premises and mutual covenants herein contained, the parties hereto hereby establish The Indiana Horsemen's Benevolent & Protective Association Benefit Fund under the terms and conditions herein set forth as follows:

ARTICLE I

DEFINITIONS

The following terms, as used herein, unless a different meaning is implied by the context, shall be defined in accordance with this Article I. With respect to any matter pertaining to benefits payable under any Policy acquired by the Fund Committee to provide benefits under the Fund , however the definitions of the terms contained

in that Policy shall be controlling over the definitions of such terms set forth in this Article I. Furthermore, with respect to any matter pertaining to benefits payable under any Plan, the definitions of the terms contained in the Plan's document or documents, to the extent those definitions are narrower, shall be controlling for purposed of the Plan.

**Agreement-** This fund agreement, including any amendments thereto.

**Association-**The Indiana Horsemen's Benevolent & Protective Association, Inc., a corporation duly organized and existing under the laws of the State of Indiana, its successors, and assigns.

**Beneficiary-**Any person with an interest in the Fund derived from a Participant or the Dependent of a Participant, to the extent so designated in accordance with the provisions of this Agreement or Plan.

**Dependent-**A Participant's spouse, any child of a Participant or his spouse who is a minor student (within the meaning of Section 151 (e)(4) of the Internal Revenue Code), any other minor child residing with a participant, and any other individual who is a person described in Section 152(a) of the Internal Revenue Code.

**Effective Date-**The effective date of the Benevolence Fund shall be June 1, 1996

**ERISA-**The Employee Retirement Income Security Act of 1974, or any provision or section thereof herein specifically referred to, such as code, provision, or section is amended for the relevant time.

**Internal Revenue Code-**The Internal Revenue Code of 1986, or any provision or section thereof herein specifically referred to, as such code, provision or section is amended for the relevant time.

**Operators-**Hoosier Park, L. P. and any other entity or organization licensed to conduct thoroughbred horse racing with pari-mutual wagering at the Track that agrees to contribute a portion of each purse at the Track to this Benevolence Fund.

**Participant-**Any person who is eligible for benefits under the Fund by virtue of his association with the Track.

**Plan-**The Plan, or each of the Plans, referred to in Article III and made a part of the Fund. The term "Plan" shall be deemed to refer separately to each such plan.

**Plan Year-**The twelve consecutive month accounting period on the last day of December.

**Policy-**Any insurance contract issued by an insurance company to provide benefits under the Fund.

**Track-**Hoosier Park.

Trainer-A trainer whose primary source of compensation for the performance of services is derived from racing, training, and care of thoroughbred race horses, who is duly licensed by the Indiana State Racing Commission, who is in good standing with the Indiana State Horse Racing Commission, and who satisfies the race and stabling requirements of the next two (2) sentences: IF the trainer owns or is responsible for at least nine horses, 2/3 of the race starts for his horses must occur at the Track; if the trainer owns or is responsible for fewer than nine horses, 1/2 of the race starts for his horses must occur at the Track. A trainer also must have his horses stabled on a full-time basis at the Track or at another stabling area approved by the Fund Committee.

Fund-The Fund established and maintained pursuant to this Agreement.

Benevolence Fund-The funds received and held by the Fund pursuant to this agreement.

Fund Year-The twelve consecutive month accounting period ending on the last day of December.

Fund Board-Collectively, the Benevolence Fund Board named in this Agreement and such successor Fund Board Members will be named pursuant to the terms hereof.

## ARTICLE II

### ELIGIBILITY

As of the date the Fund was established, those persons eligible for benefits under the Fund consisted of Trainers and individuals who provide services to Trainers on a full-time basis (other than exercise riders, farriers, jockeys, and pony people), either as employees of one or more Trainers or as independent contractors. The Fund Board, after consultation with the Association, may expand or contract the class of eligible fund beneficiaries; provided, however, that in order to be eligible to receive benefits hereunder, an individual must be primarily involved in racing, training or care of thoroughbred race horses at the Track.

The Fund Board shall also have the authority to prescribe the terms and conditions under which otherwise eligible individuals may receive benefits provided through the Fund.

To the extent the benefits are payable on account of the Plan or Plans, eligibility is determined pursuant to the documents for the Plan or Plans and is determined separately with respect to each Plan on that basis.

## ARTICLE III

## BENEFITS

The Fund Committee shall provide such benefits to Participants, and their Dependents, and Beneficiaries as they may from time to time determine and as referenced in this Article III, as now or hereafter amended.

All benefits now or hereafter provided may take the form of cash or non-cash benefits. They may be funded through the Fund or an insured basis, by one or more Policies purchased by the Fund Committee, or through any combination thereof. The terms of any uninsured benefit shall be as set forth in the Plan; notwithstanding any Plan provision to the contrary, all matters relating to any Plan benefits provided under a Policy, including eligibility, coverage, and benefits, shall be determined by reference to the provisions of such Policy, as then in force.

Benefits that may be provided under the Fund shall be limited to health benefits (including the sponsorship of on-site clinics and cash reimbursements for the cost of medical, dental, and prescription drug services and supplies); benefits for burial expenses; benefits payable to a Participant in lieu of income while Participant is unable to work due to sickness or injury; benefits designed to safeguard or to improve the health of Participants, their Dependents and Beneficiaries; benefits designed to assist Participants in emergency situations; and any other benefits that the Fund Committee determines in their sole discretion serve to foster the growth and general welfare of the industry.

## ARTICLE IV FUNDING OF BENEFITS

The Fund is funded through amounts received by the Fund Committee pursuant to one or more agreements between the Operators and the Association for the funding of the benefits hereunder. Such funding occurs from and is payable as a percentage of the amounts withheld by the Track from purses awarded at the Track.

## ARTICLE V DUTIES AND POWERS OF BENEVOLENCE FUND COMMITTEE

5.1 Establishment and Acceptance of Fund-The Fund will consist of all funds held by the Fund Committee, including funds received pursuant to the agreements referenced in Article IV and the investments, reinvestments, and proceeds thereof. Said funds shall be held, managed, invested, and administered, without distinction between principal and income, in trust pursuant to the terms hereof. The Fund Committee

hereby accept and agree to perform the duties assigned to them under this Agreement. Except as otherwise expressly provided for herein, the Fund Committee shall have exclusive authority and discretion to manage and control the Fund assets. The duties, powers and responsibilities reserved to the Fund Committee may be allocated among the Fund Committee (if there be more than one) so long as allocation is pursuant to written agreement excluded by the Fund Committee.

5.2 Powers of Benevolence Committee-With respect to the Fund, the Fund Committee shall have the following powers, in addition to those vested in them pursuant to this Agreement or by law:

(a) To retain in cash so much of the Fund in any shares of stock, bonds, securities, mortgages, notes, partnership or joint venture interests, chooses in action, options, deposits bearing a reasonable rate of interest in any federally or state supervised bank or similar financial institution (including any such institution that is a Fund hereunder), leaseholds, real estate, other evidences of indebtedness or ownership, and any other property of any kind, real, personal or mixed, however located, as in the opinion of the Fund Committee offers possibilities for investment return through income and/or capital appreciation; in making such investments, the Fund Committee shall not be restricted to securities or other property of the character authorized or required by applicable law, custom, or rules of court from time to time for trust investments.

(c) To manage, sell, contract to sell, deal in options with respect to, create holding companies to own, convey, dispose of, mortgage, exchange, transfer, abandon, improve, develop, preserve, repair, insure, lease for any item even though commencing in the future or extending beyond the term of the Fund, make contracts for, bid for, acquire, and otherwise deal with alone, or with others, and utilizing other Fund assets where appropriate, all property, real or personal, in such manner, for such considerations, and on such terms and conditions as the Fund Committee shall decide.

(d) To invest the assets of the Fund in any collective or commingled fund maintained by a bank or trust company, including any bank or trust company that may act as a Fund Committee hereunder. In this connection, the commingling of the assets of the Fund with assets of other eligible, participating trusts through such a medium is hereby specifically authorized. Any assets of the Fund that may be so added to such collective trusts shall be subjected to all provisions of the applicable declaration of trust, as amended from time to time. If required by its terms or by applicable law, the applicable declaration of trust also thereby adopted as part of the Plan, to the extent of the Fund's participation in such collective or commingled fund.

(e) To make payment or distribution required to carry out the provisions of this Agreement.

(f) To borrow money from others upon such terms and considerations as they may deem proper, and, for the sum borrowed, to issue promissory notes and secure the repayment thereof by the pledging of any Fund assets.

(g) To compromise, contest, arbitrate, enforce or abandon claims and demands.

(h) To have with respect to the Fund all of the rights of an individual owner, including the power to vote or give proxies, to join in, dissent from or oppose any voting trusts, mergers, consolidations, foreclosures, reorganizations, or liquidations, and to exercise or sell stock subscription rights or conversion rights.

(i) To hold any securities or other property in the names of Fund Committee or their nominees, or in such other form as they deem best, with or without disclosing the Fund relationship, and to cause or permit any Fund property to be held for safekeeping or custodial purposes by any authorized property or entity. To the extent required by law, however the indicia of ownership of the relevant Fund property may not be maintained outside the jurisdiction of the district courts of the United States.

(j) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction, or the Fund committee are indemnified to their satisfaction.

(k) To pay, and to deduct from and charge against the Fund, any taxes that may be imposed upon the Fund, the income, property, or transfer thereof, or upon or with respect to the interest of any person therein, that the Fund Committee are required to pay; to contest, in their discretion, the validity or amount of any tax, assessment, claim or demand that may be levied or made against or in respect of the Fund, the income, property or transfer thereof, or in any matter or thing connected therewith, provided they are indemnified to their satisfaction.

(l) After advance notice to the Association, to begin, maintain or defend any litigation necessary in connection with the administration of the Fund, except that the Benevolence Fund Committee shall not be obliged or required to do so unless indemnified to their satisfaction.

(m) To make, execute and deliver, as Fund Committee, any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases or other instruments in writing necessary or proper for the accomplishments of any of the foregoing powers; in the event that there be more than one Fund Committeeman, any single Fund Committee person shall have the power to execute, on behalf of all the Fund Committee persons, any document or return to be filed with any governmental agency or insurance company; all of the Fund Committee persons at any time acting hereunder may, by a written instrument, designate each or any of such Fund

Committee, severally or any two or more of them, jointly, or any one or more persons, severally or jointly, to make, execute, acknowledge or deliver on behalf of all the Fund Committee persons any instrument to be executed by the Fund Committee, and all of the Fund Committee at any time acting hereunder may, by a written instrument, revoke or change any such designation.

(n) To appoint any persons or firms (including but not limited to, accountants, investment advisors, counsel, actuaries, appraisers, consultants, professional plan administrators and other specialists) and to pay their reasonable compensation and expenses, or otherwise act to secure specialized advise or assistance, as the Fund Committee deem necessary or desirable in connection with the management of the Fund, to the extent not prohibited by law, the Fund Committee shall be entitled to rely conclusively upon, and shall be fully protected in any action take or omission made by them in good faith reliance upon, the advise or opinion of such persons or firms, provided such persons or firms were prudently chosen by the Fund Committee, taking into account the interest of the Participants, Dependents, and Beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.

(o) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund assets, provided that, each of which persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire, or dispose of Fund assets under the laws of more than one state. In such event, the investment manager or managers shall have the same investment powers and duties as are set forth herein with respect to the Fund Committee (except as limited by the terms of the applicable asset management arrangement or agreement), and the Fund Committee shall follow the direction of such investment manager or managers with respect to the acquisition and disposition of Fund assets; however, the Fund shall not be liable for the acts or omissions of such investment manager or managers and shall not be under any obligation to review, invest, or otherwise manage any Fund assets that are subject to the management of such investment manager or managers.

(o) To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund assets, provided that, each of which persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire, or dispose of Fund assets under the laws of more than one state. In such event, the investment manager or managers shall have the same investment powers and duties as are set forth herein with respect to the Benevolence Fund Committee (except as limited by

the terms of the applicable asset management arrangement or agreement), and the Fund Committee shall follow the direction of such investment manager or managers with respect to the acquisition and disposition of Fund assets; however the Fund Committee shall not be liable for the acts or commissions of such investment manager or managers and shall not be under any obligation to review, invest, or otherwise manage any Fund assets that are subject to the management of such investment manager or managers.

(p) To acquire one or more Policies to provide benefits under the Fund, including benefits under the Plan. The Fund Committee shall be the owner of each Policy purchased hereunder, and any and all rights provided under the Policy or permitted by the insurance company shall be reserved to the Fund Committee. The Fund Committee shall normally pay premiums on any Policy as each premium falls due. Dividends may be used in reduction of any such premium, may be applied in any other manner permitted by the insurance company, or may be taken in cash by the Fund, as they may determine from time to time.

(q) To perform any and all other acts, takes all other proceedings, and exercise all other rights and privileges, although not mentioned herein, in their judgment necessary or appropriate for the proper and advantageous management, administrators, investment, and distribution of the Fund.

5.3 Management Authority-Except as otherwise provided in Section 5.2, the powers granted the Fund Committee thereunder shall be exercised in the exclusive discretion of the Benevolence Fund Committee.

## ARTICLE VI THE BENEVOLENCE FUND COMMITTEE

6.1 Tenure of Trustees.-Any Benevolence Fund Committee person may resign at any time by giving 30 days' prior written notice to the other Fund Committee and to the Association. The Association may remove any or all of the Fund Committee if the Association reasonably believes that any or all of the Fund Committee has violated any law or standard of conduct applicable to fiduciaries, advance notice is not required. The Fund Committee members continuing in office shall appoint the person or persons so long as at least two of the Fund Committee remain. The Fund Committee also shall have the right to increase the number on the Fund Committee in office at any time and appoint the person or persons to fill the additional position or positions. If at any time, because of resignations or removals no Fund Committee members are continuing in office, however, the Association shall appoint up to three persons to assume the positions and responsibilities of the Fund Committee. Pending the appointment of any successor Fund Committee Member and the

acceptance of such appointment, the existing Fund Committee shall have full power to take any action hereunder. Each successor or additional Fund Committee Member shall have all the rights and power, as well as duties and liabilities, vested in the original Fund Committee without the signing or filing of any further instrument, however, any resigning or removed Fund Committee Member shall execute all documents and to all acts necessary to transfer possession of and vest title of record to any assets of the Fund in any successor Fund Committee or the remaining Member or Members. A successor Fund Committee person may accept the accounting rendered pursuant to Section 7.2 and the property delivered to it by a predecessor Fund Committee Member without incurring any liability or responsibility for so doing.

6.2 Compensation and Expenses of the Benevolence Fund Committee-Unless otherwise agreed by the Association and the Fund Committee, and the payment is permissible by law, the Fund Committee shall not be entitled to compensation for their services as serving on the Fund Committee. All expenses reasonably incurred by the Fund Committee in carrying out their functions, and any reasonable compensation agreed to by the Association and the Fund Committee, shall constitute a charge upon the Fund assets, and the Fund Committee shall be entitled to pay the same from the Fund.

6.3 Immunity and Liability of the Benevolence Fund Committee-Except to the extent that this Section 6.3 is inconsistent with applicable law.

(a) The Fund Committee shall be fully protected in acting upon any instrument, certificates, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and the Fund Committee shall be under no duty to make any investigation or any inquiry as to any statement contained in any such writing, but they may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(b) The Fund committee shall not be responsible for the adequacy of the Fund to meet and discharge any and all payments and liabilities under the Plan or the Agreement. The Fund Committee shall be responsible only for such sums as shall actually be received by them as the Fund Committee hereunder, and it shall not be the duty of the Fund Committee to collect, or to ascertain the correctness of the amount of any sum received.

(c) All persons dealing with the Fund Committee are released from inquiry as to the decision or authority of the Fund Committee and from seeing to the application of any property or delivered to the Fund.

(d) No Fund Committee person shall be personally liable for the acts or omissions of any other Fund Committees, and no successor Fund Committee person shall be in any way liable or responsible for anything

done or omitted in the administration of the Fund prior to the date on which he became a Fund Committee member.

(e) The Fund Committee shall have the right to obtain a judicial settlement of their accounts at any time (the only necessary parties thereto being the Fund Committee and the Association), and such judicial settlement shall be binding on all parties claiming any interest under the Plan or Fund.

(f) As an expense of the Fund, the Fund Committee may purchase liability insurance to cover liabilities or losses occurring on account of any act or omission by a Fund Committee Member, but, to the extent required by law, the insurance contract must permit recourse by the insurer against the Fund Committee Member or Members whose act or omission resulted in a claim against the insurance policy. A Fund Committee Member also may use his own funds to purchase liability insurance.

6.4 Vote of the Benevolence Fund Committee Members- Whenever any action is required or permitted to be taken under the Plan or Fund by the Fund Committee, such action shall be determined by a vote of the majority of the Fund Committee then acting (or by unanimous vote where there are only two Fund Committee Members).

## ARTICLE VII ADMINISTRATION OF THE BENEVOLENCE FUND

7.1 Administration and Investment Policy-The Plan shall be administered by the Fund Committee or a committee of persons (whose members may include one or more of the Fund Committee) designated by the Fund Committee in accordance with the terms of the Plan. The Fund Committee's discretion in investing and reinvesting the Fund shall be subject to any investment policy or policies, as amended for the applicable time, as the Fund Committee may adopt from time to time.

7.2 Financial Records and Accounting-The Benevolence Fund Committee shall maintain records and accounts reflecting all receipts and disbursements made by them under the Agreement. The Fund Committee's records and accounts shall be open to the inspection of the Association at all reasonable times, and the records and accounts may be audited from time to time by such persons as the Association may specify. The Fund committee shall evaluate the Fund annually, or more often if requested by the Association, and they shall render a written accounting as of the end of each Fund Year, as of the effective date of any removal or resignation of the Fund Committee, and as of such additional dates as requested by the Association, and they shall render a written accounting as of the end of each Fund Year, as of the effective date of any removal or resignation of the Fund Committee Members, and as such

additional dates as requested by the Association. Such accountings shall show the condition of the Fund and all receipts, disbursements, and other transactions effected by the Fund committee during the period covered by the accounting, all based on fair market values prevailing as of such date. Any such accounting shall be due within 90 days after the date thereof; to the extent permitted by law, upon the expiration of 180 days from the filing of such accounting the Fund Committee shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of their accounts and transactions shown in such accounts except with respect to any such accounts or transactions as to which the Association files a written exception within 180 day period. All determinations as to the value of the assets of the Fund, and as to the amount of the liabilities thereof, shall be made by the Fund Committee, whose decisions shall be final and conclusive and binding on all parties hereto, the Participants, their Dependents and Beneficiaries, and their estates. In making any such determination, the Fund Committee shall be entitled to seek and rely upon the opinion of, or any information furnished by brokers, appraisers and other experts. The Fund Committee shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

7.3 Prohibition Against Diversion of Funds-Notwithstanding any provision of the Plan or this Agreement to the contrary, it shall be impossible by operation of the Plan or Fund Committee, by natural termination of either, by power of revocation or amendment, by the happening of any contingency, or by collateral arrangement or by other means, for any part of the corpus or income of the Fund, or any funds contributed thereto, to insure to the benefit of the Operators or the Association or any member thereof (other than through the payment of benefits in accordance with the Plan of this Agreement).

7.4 Spendthrift Provision-No amount payable under this Agreement or the plan will, except as otherwise specifically provided by law, be subject in any manner to anticipation, alienation, attachment, garnishment, sale, transfer, assignment (either at law or in equity), levy, execution, pledge, encumbrance, charge or any other legal or equitable process, and any attempt to do so will be void; nor will any benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled thereto. This provision shall not prohibit any arrangements for (i) the withholding of any taxes that may be due with respect to benefit payments; (ii) the recovery by the Fund of overpayments of benefits previously made to any Participant, Dependent, or Beneficiary; (iii) the transfer of benefit rights from the Plan to another plan; or (iv) the direct deposit payments to an account in a banking

institution (if not part of an arrangement constituting an assignment or alienation).

In the event any benefits are garnished or attached by order of any court, the Fund may bring action for a declaratory judgment in court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of that action, any benefits that become payable shall be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of the action.

**7.5 Commingling Assets-**If the Fund Committee elect to provide benefits more than one Plan or arrangement, the Fund may be administered, held and invested hereunder as a single, commingled, common fund or as separately invested funds. If the Fund is invested as a single, commingled, common fund, however, (i) undivided interests in the Fund assets shall be allocated to the Plans or other arrangements in accordance with their respective interests; and (ii) the Fund Committee shall maintain a separate accounting reflecting each Plan's or other arrangement's equitable share in such assets, to the end that, except for any collective investment of Fund assets, each component fund shall be treated in all respects as a separate unit.

**7.6 Payment on Behalf of Infant or Incompetent-**If any person to whom a benefit is payable hereunder is an infant, or is incompetent by reason of physical or mental disability, the Fund Committee shall have the power to cause the payments becoming due to such person to be made to another for his benefit without the Fund Committee bearing the responsibility to see the application of such payments.

**7.7 Relationship of Insurers to Fund-**In no event shall any insurance company issuing any Policy or other contract to the Fund Committee under this Agreement (including the Plan) be considered a party to, or be required to examine, this Agreement or the Plan and shall have no obligation to determine if its actions are proper under, or in accordance with, the provisions of this Agreement or the Plan. Nothing in this Agreement or in the Plan shall in any way be construed to enlarge, change, vary, or in anyway affect the obligations of an insurer as expressly provided in a policy or contract issued by it. No insurer shall be responsible for the failure of the Fund Committee to perform their duties as such or for the application or disposition of any money paid or to be paid to the Fund, and such payment shall fully discharge the insurer for the amount so paid.

Neither the Association nor the Fund Committee shall be responsible: (i) for the validity of any Policy or contract issued by an insurer; (ii) for the failure on the part of any insurer to make any payments or provide any benefits thereunder; (iii) for the action or inaction of any person or persons that may render the Policy or contract invalid or

unenforceable; or (iv) for any restrictions or provisions contained therein or imposed by the insurer or by any other person.

7.8 Mutual Exclusion of Responsibility-Neither the Fund Committee nor the Association shall be obliged to inquire into or be responsible for any act or failure to act, or the authority therefor, on the part of the other.

7.9 Uniformity of Discretionary Acts-Whenever in the administration or operation of the Fund a discretionary action by the Fund Committee is required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated.

7.10 Litigation-In any action or judicial proceeding affecting the Fund, it shall be necessary to join as parties only the Fund Committee and the Association. Except as may be otherwise required by law, no Participant, Dependent, or Beneficiary shall be entitled to any notice or service of process, and any final judgment entered in such action shall be binding on all persons interested in, or claiming under, the Plan or the Fund.

#### ARTICLE VIII AMENDMENT AND TERMINATION

8.1 Amendment-The Fund Committee shall have the right to amend this Agreement, at any time (subject to the provisions of Section 7.3); however, the Fund Committee shall not have the right or power to amend the provisions of Section 6.1 (regarding the removal and appointment of Fund Committee Members by the Association) or the provisions of Section 6.2 (on the compensation of Fund Committee Members). All parties to this Agreement or claiming any interest thereunder shall be bound by any such amendment. Further, this Agreement may be amended at any time, retroactively if required, if found necessary in order to conform to applicable law; no such amendment shall be considered prejudicial to the interest of any Participant, Dependent or Beneficiary hereunder.

8.2 Termination-To the extent permissible under any agreement or agreements between the Operator and either the Fund Committee or the Association for funding the Fund and the benefits thereunder, the Fund Committee also may terminate the Fund. Upon that termination, subject to the provisions of Section 7.3, the Fund Committee shall allocate the assets of the Fund as follows:

- (a) First, to pay any benefits due and owing under the Fund to the then current Participants, Dependents and Beneficiaries;
- (b) Second, to pay the expenses of terminating the Fund.
- (c) Third, with respect to any excess, in accordance with the terms of any agreement (whether new or existing) entered by the parties

to the agreement or agreements referenced in this Section 8.2 regarding such allocation. If the parties fail to agree, the excess shall be applied to the benefits of the then current Participants, Dependents and Beneficiaries. In no event, however, shall any assets of the Fund be paid to, or inure to the benefit of, the Operators or the Association or any member thereof (other than through the payment of benefits in accordance with the Plan or this Agreement).

## ARTICLE IX MISCELLANEOUS

9.1 Limitations on Liability of Association, Benevolence Fund Committee and Trust-Neither the establishment of the Plan or the Fund nor any modification thereof, nor the creation of any fund or account, or the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Association, the Operators, the Fund Committee, any insurance company, or any officer or employee of the foregoing, except as provided by law, by the Agreement, by any Plan provision, or by the terms of any Policy. Any person having a right or claim under this Agreement shall look solely to the Fund assets or to an insurance company that is obligated to provide benefits through the Fund. In no event shall the Fund Committee, the Operators, the Association or their respective employees, officers, directors or stockholders be liable to any person on account of any claim arising by reason of the provisions of the Plan or this Agreement or of any instrument or instruments implementing their provisions, or for the failure of any Participant, Dependent, or Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Fund or any other contribution thereto distribution therefrom.

9.2 Construction-In case any provision of the Plan or this Agreement shall be held to be illegal or void, such illegality shall not affect the remaining provisions of the Plan or this Agreement, but that provision shall be fully severable, and the Plan or this Agreement shall be construed and enforced as if the illegal or invalid provisions had never been inserted herein. For all purposes of the Fund, where the context requires, words in the masculine gender shall include the feminine and neuter genders, the singular shall include the plural, and the plural shall include the singular. Headings and Sections are inserted only for convenience of reference and are not to be considered in the construction of the Agreement. The benefits provided pursuant to this Agreement are not intended to constitute benefits that are subject to ERISA. If there is a determination (including a formal determination by a government agency or official) that the Fund and the benefits thereunder are subject to ERISA, however, the Fund shall be administered in

accordance with the applicable requirements of ERISA. Unless preempted, the laws of the State of Indiana shall govern, control and determine all questions arising with respect to the Fund and the interpretation and validity of the Agreement's provisions.

9.3 ERISA Coverage-The benefits provided pursuant to this Fund Agreement are not intended to constitute benefits that are subject to ERISA. Neither the Operators nor the Association employ any individuals who are covered by the Fund. In establishing the Fund, the Operators and the Association are not acting on behalf of any individual or entity that employs an individual who is or may become eligible for benefits under the Fund. The Fund and any plans or arrangements thereunder are being established out of a general concern for the welfare and well being of those individuals who are not employed by the Operators but whose primary source of income is derived from the racing, training and care of thoroughbred race horses at the Track.

9.4 Term of Fund-This Fund shall terminate twenty-one (21) years after the death of the last survivor of those now living who are Participants or Beneficiaries in accordance with the terms of this Agreement.

Witness the hands and seals of the parties hereto this 1st day of June, 1996.

Fund Board Members  
Signatures:

THE INDIANA HORSEMEN'S  
BENEVOLENT & PROTECTIVE  
ASSOCIATION, INC.

By: Nancy Crone, President  
Nancy Crone, President

government agency or official) that the Trust and the benefits thereunder are subject to ERISA. however, the Trust shall be administered in accordance with the applicable requirements of ERISA. Unless preempted, the laws of the Commonwealth of Indiana shall govern, control and determine all questions arising with respect to the Trust and the interpretation and validity of the Agreement's provisions.

9.3 ERISA Coverage-The benefits provided pursuant to this Trust Agreement are not intended to constitute benefits that are subject to ERISA. Neither the Operators nor the Association employ any individuals who are covered by the Trust. In establishing the Trust, the Operators and the Association are not acting on behalf of any individual or entity that employs an individual who is or may become eligible for benefits under the Trust. The Trust and any plans or arrangements thereunder are being established out of a general concern for the welfare and well being of those individuals who are not employed by the Operators but whose primary source of income is derived from the racing, training and care of thoroughbred race horses at the Track.

9.4 Term of Trust-This Trust shall terminate Twenty-one (21) years after the death of the last survivor of those persons now living who are Participants or Beneficiaries in accordance with the terms of this Agreement

Witness the hands and seals of the parties hereto this 1<sup>st</sup> day of January, 1999.

THE INDIANA HORSEMEN'S BENEVOLENT & PROTECTIVE ASSOCIATION, INC.

Trust Board Members:

*Mike Bruder*  
Mike Bruder, Vice President

By *Nancy Crone*, Pres  
Nancy Crone, President

Wendy Brown *Wendy Brown*

Joe Davis

Ron McKay

*Paul McKay*

Don Horrell

Chuck Noon \*\*\*

Don Kubovchik

Curtis Pulliam

*Curtis Pulliam*

Cathy Santiago

Bill Summers

*Bill Summers*

*Cathy Santiago*

\*\*\*Chuck Noon became ill and was not able to attend meetings to sign document.