

# **Agenda Items # 1 - 5**

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the Indiana Horse Racing Commission (“Commission”), by Deena Pitman (“Director Pitman”), Executive Director of the Indiana Horse Racing Commission Staff (“Commission Staff”) and Fernando De La Cruz (“De La Cruz”), a licensee subject to regulation by the Commission. Collectively, the Commission Staff and De La Cruz shall be referred to herein as “the Parties.” This Agreement is subject to the review and approval of the Commission.

### RECITALS

1. The Indiana Horse Racing Commission (“IHRC”) is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
2. At all times relevant to this Settlement Agreement, De La Cruz was licensed as a jockey with the IHRC.
3. As a licensee of the IHRC, De La Cruz is subject to IHRC rules and regulations.
4. As a licensee, De La Cruz is required to be knowledgeable of all IHRC rules and regulations.
5. Pursuant to 71 IAC 7.5-6-5(b)(2): “No jockey shall carelessly or willfully jostle, strike, or touch another jockey or another jockey’s horse or equipment.”
6. De La Cruz was riding the horse Mariah’s Fortune in the third race at Indiana Grand on August 10, 2021.
7. After an inquiry was initiated by De La Cruz and upon reviewing the race video of the incident, the stewards noticed that De La Cruz appeared to throw two elbows at Mr. Romero, which they believed made physical contact with Mr. Romero.
8. Following the determination that De La Cruz threw two elbows that made contact with Mr. Romero during the third race, the Stewards issued a ruling (Ruling No. IG-2021-2427) suspending De La Cruz for a period of seven days, beginning August 23, 2021, and extending through August 29, 2021.
9. De La Cruz timely filed his appeal and a request for stay on August 17, 2021.
10. The Office of Administrative Law Proceedings (“OALP”) assigned ALJ Bernard “Buddy” Pylitt to the matter on or about August 20, 2021.

11. On Tuesday, August 24, 2021, ALJ Pylitt conducted a prehearing conference and oral arguments on De La Cruz's motion for stay. The Commission Staff did not oppose De La Cruz's motion for stay.

12. The hearing was set for October 22, 2021. Following additional information gathering by Commission Staff, settlement negotiations were entered on or about Friday, October 8, 2021.

13. Now, in full and complete resolution of any and all further administrative proceedings involving De La Cruz relative to Steward's Ruling No. IG-2021-2427 and the violation referenced above, the Commission Staff and De La Cruz agree to the terms and conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

14. Commission Staff maintains that it has sufficient evidence to prove by a preponderance of the evidence that De La Cruz committed the violation charged in the Ruling. De La Cruz contests the same and maintains that he has sufficient evidence to prove by a preponderance of the evidence that he did not commit the violation charged in the Ruling.
15. This agreement does not cover any violations that may be discovered that are not referenced in Steward's Ruling No. IG-2021-2427.
16. De La Cruz agrees to dismiss with prejudice, withdraw and/or waive all related pending legal and administrative proceedings including any related appeals, and release all claims and potential claims against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees relating to the Commission actions that are the subject of this Settlement Agreement. De La Cruz specifically agrees to release and forever discharge any claims and/or complaints against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees and/or the stewards arising from, relating to, or in any way connected with the issues associated with the Commission Staff's initiation and/or pursuit of the underlying disciplinary action against De La Cruz.
17. As a result of the disciplinary matter that was the subject of the underlying proceeding, De La Cruz agrees to serve a one (1) day suspension for the violation charged in Steward's Ruling No. IG-2021-2427.
18. The Parties specifically agree that this Agreement shall be governed by applicable Indiana regulations and any failure to comply with those rules is subject to enforcement by the Stewards and/or the Commission.

19. De La Cruz and Commission Staff acknowledge that this Agreement is subject to the approval of the Indiana Horse Racing Commission.
20. The Commission will enter a ruling consistent with this Agreement which will make clear that the sanction of one (1) day remains in place and is to be served on November 11, 2021.
21. Should De La Cruz breach this Agreement, this Agreement shall be deemed void, and the Commission Staff may commence proceedings related to the alleged violation as though the Agreement never existed.
22. Any waiver of any provision of this Agreement must be in writing and must be approved by the Commission or the Commission Staff. No waiver of any provision of this Agreement shall constitute either a waiver of any provision hereof (whether or not similar) or a continuing waiver.
23. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.
24. This Agreement shall be deemed executed in the State of Indiana, and shall be governed and construed in accordance with the laws of Indiana, without regard to its choice of law provisions, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Indiana, without regard to its choice of law provisions. Exclusive jurisdiction and venue over any and all disputes arising out of or in connection with this Agreement shall be brought only in a state court of competent jurisdiction located in Marion County, Indiana.
25. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.
26. De La Cruz represents that he has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has had the right to consult with his own counsel, and agrees to be bound by its terms. De La Cruz acknowledges that he has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.





Indiana Horse Racing Commission Staff. Dale Lee Pennycuff, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Pennycuff may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider IHBPA's 2022 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 30, 2021, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2022 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence at 10:00 am EST, 2nd Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of IHBPA's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to IHBPA's 2011-2021 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Tuesday, November 23, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Monday, November 29, 2021.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Tuesday, November 23, 2021. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Tuesday, November 30, 2021. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Tuesday, November 30, 2021. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Tuesday, November 30, 2021. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Tuesday, November 30, 2021.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can



be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to insure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.

The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.

d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

Opening Statement of Applicant	Up to 10 minutes
Oral Presentation by Applicant	Up to 15 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

f. Commission Free to Ask Questions.

During the hearing on the Applicant's presentation, any Commissioner, the Commission's counsel, or the Commission's Executive Director may ask questions of any witness in the nature of cross-examination or to assist the Commission's understanding of the issues relevant to the Application and any appropriate action to be taken.

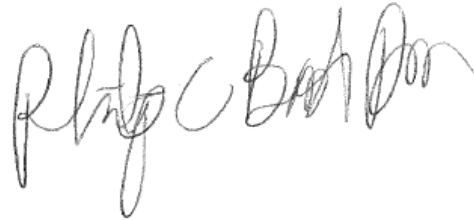
g. Individuals Requesting Time to Speak to the Application.

A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals who wish to speak and the total amount of time available in which to do so.

IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of November 2021.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is fluid and cursive, with a large initial "P" and a distinct "C" and "B".

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Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 19<sup>th</sup> day of November 2021.

Indiana Horse Racing Commission:  
Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
Timothy Wade, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Jeffrey Stemerick, Esq.  
Taft  
One Indiana Square, Ste. 3500  
Indianapolis, IN 46204

Joseph Davis  
IHBPA President  
1624 Wagner Drive  
Shelbyville, IN 46176

Brian Elmore  
IHBPA Executive Director  
7539 W. Village Way  
New Palestine, IN 46163

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

**IN RE:**

**2022 Application for Registration of Quarter )  
Horse Racing Association of Indiana, Inc. )  
Pursuant to 71 IAC 13-1-1 et seq. )**

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2022 APPLICATION FOR  
REGISTRATION OF QUARTER HORSE RACING ASSOCIATION OF INDIANA, INC.  
PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2022 (hereinafter “the Application”), submitted by the Quarter Horse Racing Association of Indiana, Inc. (hereinafter “the Applicant” or “QHRAI”) on or about August 30, 2021. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Monday, December 6, 2021, to begin soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 10:00 am EST, 2nd Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. The Hearing will relate to the following Application that was filed with the Commission on or about August 30, 2021:

2022 Application for Registration of the Quarter Horse Racing  
Association of Indiana, Inc. Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, Bill Estes, and Timothy Wade, Members. Noah Jackson, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also appear for the

Indiana Horse Racing Commission Staff. Dale Lee Pennycuff, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Pennycuff may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider QHRAI's 2022 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 30, 2021, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2022 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence in the at 10:00 am EST, 2<sup>nd</sup> Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of QHRAI's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to QHRAI's 2011-2021 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Tuesday, November 23, 2021, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Monday, November 29, 2021.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Tuesday, November 23, 2021. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Tuesday, November 30, 2021. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Tuesday, November 30, 2021. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Tuesday, November 30, 2021. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Tuesday, November 30, 2021.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to insure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.



The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.

d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

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e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

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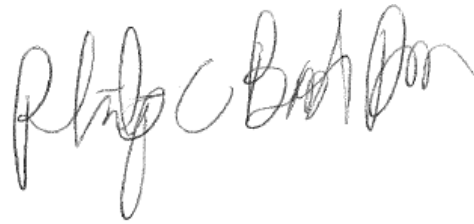
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IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of November 2021.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is written in a cursive, somewhat stylized font.

---

Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 19<sup>th</sup> day of November 2021.

Indiana Horse Racing Commission:  
Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
Timothy Wade, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Dianne Bennett  
Executive Director  
6384 E 500 N  
Franklin, IN 46131

Paul Martin  
QHRAI President  
P.O. Box 399  
Shelbyville, IN 46176

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

**IN RE:**

**2022 Application for Registration of Indiana** )  
**Thoroughbred Owner's and Breeder's Association** )  
**Pursuant to 71 IAC 13-1-1 et seq.** )

**NOTICE OF HEARING AND PRE-HEARING ORDER ON 2022 APPLICATION FOR  
REGISTRATION OF INDIANA THOROUGHBRED OWNER'S AND BREEDER'S  
ASSOCIATION PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter "the Commission") on an Application for Approval as a Registered Horsemen's Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2022 (hereinafter "the Application"), submitted by the Indiana Thoroughbred Owner's and Breeder's Association (hereinafter "the Applicant" or "ITOBA") on or about September 1, 2021. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Monday, December 6, 2021, to begin as soon as this matter advances on the Commission's agenda during its regularly scheduled meeting which will commence at 10:00 am EST, 2nd Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. The Hearing will relate to the following Application that was filed with the Commission on or about September 1, 2021:

2022 Application for Registration of the Indiana Thoroughbred Owner's  
And Breeder's Association Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, Bill Estes, and Timothy Wade, Members. Noah Jackson, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also appear for the

Indiana Horse Racing Commission Staff. Dale Lee Pennycuff, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Pennycuff may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider ITOBA's 2022 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about September 1, 2021, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2022 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of thoroughbred owners and trainers.

II. Application Process Timeline.

a. Hearing Date and Time

The hearing will commence in at 10:00 am EST, 2<sup>nd</sup> Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

b. Incorporation by Reference of ITOBA's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to ITOBA's 2011-2021 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Tuesday, November 23, 2021, will be considered as part of the Application.

c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Monday, November 29, 2021.

d. Exhibits the Commission Proposes to Make a Part of the Record.

A list of exhibits which the Commission intends to make a part of the record may be prepared by the Commission's counsel and distributed to the Applicant's representative or counsel for the Applicant on or before the close of business on Tuesday, November 23, 2021. It should be understood that even in the absence of filing a list of exhibits, the Commission will offer into evidence the Application, any supplements thereto timely filed by the Applicant and any Staff Report issued by the Commission Staff. It should also be understood that the Commission will take official notice of any record of prior related hearings (including Final Orders) involving the Applicant, pursuant to Indiana Code section 4-21.5-3-26(c). The Applicant must notify the Commission in writing of any exhibit to which it objects on or before noon on Tuesday, November 30, 2021. If no objection is timely made, all specified exhibits will be made a part of the record at the commencement of the hearing. The Commission may expand that list prior to or at the scheduled hearing, however, the Applicant will be given an opportunity to make an objection to any such additional materials.

e. Witness and Exhibit Lists of Applicants.

Unless the Applicant intends to submit an additional filing or supplement to the Application, no Witness List is contemplated. In the event that the Applicant does submit an additional filing, or otherwise determines that witness testimony is necessary, any such Witness and Exhibit List are to be filed with the Commission on or before noon on Tuesday, November 30, 2021. When the Applicant files the Witness and Exhibit List, copies of the exhibits are to be left with the Commission so that they can be marked sequentially by the court reporter. While the Applicant may retain its oversized exhibits, reduced copies must be made available to the Commission on or before noon on Tuesday, November 30, 2021. Documents or exhibits not identified on Applicant's Exhibit List may not be introduced by Applicant.

f. Request for Official Notice.

The Applicant should submit in writing any request for matters to be officially noticed pursuant to Indiana Code section 4-21.5-3-26(f) on or before noon on Tuesday, November 30, 2021.

g. Issuance of Subpoenas.

The Applicant should submit proposed subpoenas to be issued by the Commission no later than the time that the Witness and Exhibit Lists are filed so that they can be issued pursuant to Indiana Code section 4-21.5-3-22. Subpoenas shall be issued on the signature of the Chair, or on the signature of the Vice Chairman in the event the Chair is unavailable.

III. Matters Relating to the Conduct of the Hearing.

a. The Commission will be sitting as an Administrative Law Judge at the Hearing.

The Commission is sitting both as an Administrative Law Judge and as “ultimate authority” (pursuant to Indiana Code section 4-21.5-1-15) with respect to this Application for Registration. Indiana Code section 4-21.5-3-11 provides in part that an Administrative Law Judge serving in a proceeding may not communicate directly or indirectly, regarding any issue in the proceeding while the proceeding is pending with any party or any individual who has a direct or indirect interest in the outcome of the proceeding. Such communications are prohibited and are referred to as “ex parte communications.” Additionally, while a Commission Member may communicate separately with another Commission Member and may receive aid from members of the Commission Staff, the Commission Staff is prohibited from having ex parte communications with a Commission member which contain information that would furnish, augment, diminish, or modify the evidence in the record. If the Commission receives an ex parte communication in violation of this statute, please contact counsel for the Commission so that an appropriate public disclosure can be prepared pursuant to the Administrative Orders and Procedures Act. In appropriate circumstances, a Commission Member receiving or otherwise participating in such a prohibited communication can be disqualified from acting further on the Application before the Commission.

Additionally, when acting as an Administrative Law Judge, each Commission Member is prohibited (pursuant to Indiana Codes section 4-21.5-3-12) from commenting publicly, except as to hearing schedules or procedures, about pending proceedings. Accordingly, both the Commission Members and the members of the public are to be mindful of this limitation as the Commission moves forward to consider the evidence and to make a decision on the Application.

b. Hearing to be Conducted under Oath.

The hearing will be conducted under oath or affirmation pursuant to Indiana Code section 4-21.5-3-26(b). In order to insure consistency, any non-party statements are to be given under oath or affirmation pursuant to Indiana Code section 4-21.5-3-25(f).

c. Staff Review and Presentation of Findings.

The Commission Staff is conducting a review of the Application and may speak to its report (*see* II.d., *supra*) at the hearing.

d. Application Hearing Time Schedule.

The maximum time allotted for each part of the hearing is as follows:

Opening Statement of Applicant	Up to 10 minutes
Oral Presentation by Applicant	Up to 15 minutes
Testimony of Commission Staff	Up to 10 minutes
Testimony of Interested Persons And Organizations	Up to 10 minutes
Rebuttal and Final Statements	Up to 5 minutes

e. Chairman to Rule on Procedural Issues.

The Chair will rule on any procedural issues requiring an immediate ruling which are raised at the hearing on the Application.

f. Commission Free to Ask Questions.

During the hearing on the Applicant's presentation, any Commissioner, the Commission's counsel, or the Commission's Executive Director may ask questions of any witness in the nature of cross-examination or to assist the Commission's understanding of the issues relevant to the Application and any appropriate action to be taken.

g. Individuals Requesting Time to Speak to the Application.

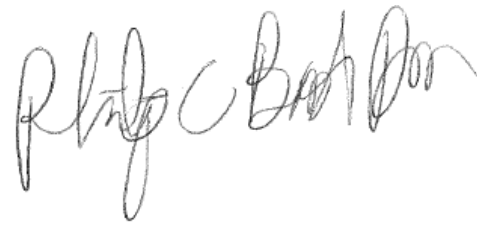
A sign-up sheet will be made available on the date of the hearing for those interested in speaking during the time allotted for Testimony of Interested Persons and Organizations. An appropriate amount of time will be determined by the Chair at the hearing with consideration of the number of individuals who wish to speak and the total amount of time available in which to do so.

IV. Notice of Pre-Hearing Order

The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.



This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 19<sup>th</sup> day of November 2021.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is fluid and cursive, with the first name "Philip" being the most prominent.

---

Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 19<sup>th</sup> day of November 2021.

Indiana Horse Racing Commission:  
Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
Timothy Wade, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Bruce Murphy  
ITOBA Agent  
2730 N 175 W  
Crawfordsville, IN 47933

Tom Mosley  
ITOBA President  
5255 N. 350 E.  
Anderson, IN 46012

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel

STATE OF INDIANA  
BEFORE THE INDIANA HORSE RACING COMMISSION

IN RE:

2022 Application for Registration of )  
Indiana Standardbred Association )  
Pursuant to 71 IAC 13-1-1 *et seq.* )

**AMENDED NOTICE OF HEARING AND PRE-HEARING ORDER ON 2022**  
**APPLICATION FOR**  
**REGISTRATION OF INDIANA STANDARDBRED ASSOCIATION**  
**PURSUANT TO 71 IAC 13-1-1 ET SEQ.**

This matter comes before the Indiana Horse Racing Commission (hereinafter “the Commission”) on an Application for Approval as a Registered Horsemen’s Association pursuant to 71 IAC 13-1-1 *et seq.* for the calendar year 2022 (hereinafter “the Application”), submitted by the Indiana Standardbred Association (hereinafter “the Applicant” or “ISA”) on or about August 31, 2021. The Commission, by its Chair, issues this notice and order pursuant to the provisions of the Indiana Administrative Orders and Procedures Act, Indiana Code sections 4-21.5-1-1 *et seq.*

**NOTICE OF HEARING**

The Indiana Horse Racing Commission will hold a hearing on Monday, December 6, 2021, to begin as soon as this matter advances on the Commission’s agenda during its regularly scheduled meeting which will commence at 10:00 am EST, 2nd Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. The Hearing will relate to the following Application that was filed with the Commission on or about August 31, 2021:

2022 Application for Registration of the Indiana Standardbred  
Association Pursuant to 71 IAC 13-1-1 *et seq.*

The Hearing will be held for the purpose of providing an opportunity for the Applicant to make a presentation of its Application to the Indiana Horse Racing Commission; an opportunity for the Commission to ask questions of any party representatives and witnesses who may testify at the Hearing; and an opportunity for interested nonparty organizations and persons to provide testimony in support of or adverse to the Application.

The Hearing is to be held by the Indiana Horse Racing Commission pursuant to the authority granted to it by Indiana Code section 4-31-1-1, Indiana Code section 4-35-7-12, 71 IAC sections 13-1-1 *et seq.* and Indiana Code sections 4-21.5-3-1 *et seq.* All members of the Indiana Horse Racing Commission intend to act as the Administrative Law Judge for the Hearing. The members include: Philip Borst, Chairman; George Pillow, Bill McCarty, and Bill Estes, Members. Noah Jackson, Esq. is and will act as legal counsel to the Indiana Horse Racing Commission during these proceedings. Deena Pitman, Executive Director, will also appear for the Indiana Horse

Racing Commission Staff. Dale Lee Pennycuff, Esq. is and will act as legal counsel to the IHRC Staff during these proceedings. Mr. Pennycuff may be contacted for information concerning the proposed Hearing schedule, the procedure to be followed at the Hearing, and for inspection of copies of the notice to the parties, at the offices of the Indiana Horse Racing Commission, 1302 N. Meridian St., Ste. 175, Indianapolis, Indiana 46202 (tel. no. 317-233-3119).

### **PRE-HEARING ORDER**

The Commission, by its Chairman, Philip Borst, pursuant to Indiana Code section 4-21.5-3-19(d), issues the following Pre-Hearing Order with respect to the matters described herein:

#### I. Purpose of the Hearing on Applicant's Petition.

The Commission will consider ISA's 2022 Application for Registration as a Registered Horsemen's Association Pursuant to 71 IAC 13-1-1 *et seq.* filed with the Commission on or about August 31, 2021, requesting Commission approval to serve as the registered horsemen's association for the calendar year 2022 to receive the monies specified by Indiana Code section 4-35-7-12 to be distributed for the benefit of standardbred owners and trainers.

#### II. Application Process Timeline.

##### a. Hearing Date and Time

The hearing will commence at 10:00 am EST, 2<sup>nd</sup> Floor Clubhouse, at Indiana Grand Racing & Casino, 4300 N. Michigan Road, Shelbyville, IN 46176. This matter will be heard and will continue, with appropriate recesses, until completed. The record will be closed at the conclusion of the hearing. Thereafter, the Commission will deliberate on and decide whether the Application will be approved or denied and does not comprehend discussion during the deliberation with the Applicant or other interested parties.

##### b. Incorporation by Reference of ISA's 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021 Applications and Related Materials.

The Application incorporates by reference any documents submitted, considered or generated with respect to ISA's 2011-2021 Applications for Registration, including, but not limited to, any amended commission staff reports. Note: No substantive changes to the Application made after Tuesday, November 23, 2021, will be considered as part of the Application.

##### c. Report of the Commission Staff.

The Commission Staff will review the Application and related information provided and may submit a Staff Report on the Application, which would be

distributed to the Applicant on or before the close of business on Monday, November 29, 2021.

d. Exhibits the Commission Proposes to Make a Part of the Record.

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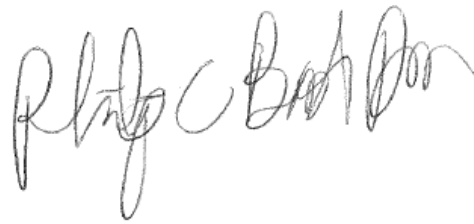
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The Applicant is advised that if it fails to attend or participate in the scheduled hearing, or any other stage of the proceeding, the proceeding may be dismissed pursuant to Indiana Code section 4-21.5-3-24.

This Pre-Hearing Order is issued by the Indiana Horse Racing Commission this 29<sup>th</sup> day of November 2021.

A handwritten signature in black ink, appearing to read "Philip C. Borst". The signature is fluid and cursive, with the first name "Philip" being the most prominent.

---

Philip Borst, DVM  
Chairman  
Indiana Horse Racing Commission



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following parties by email this 29<sup>th</sup> day of November 2021.

Indiana Horse Racing Commission:  
Philip Borst, Chairman  
George E. Pillow, Jr., Member  
William D. McCarty, Member  
Bill Estes, Member  
1302 N. Meridian Street  
Ste. 175  
Indianapolis, IN 46202

Deena Pitman, Executive Director  
Indiana Horse Racing Commission  
1302 N. Meridian St. Ste. 175  
Indianapolis, IN 46202

Roger Young, Esq.  
Attorney for ISA  
40 W. Court St., Ste. D  
Franklin, IN 46131

Joe Putnam  
ISA President  
311 American Legion Place  
Greenfield, IN 46140

/s/ Dale Lee Pennycuff  
Dale Lee Pennycuff  
Counsel