



## MEMORANDUM

TO: Mayor Wynn and City Council Members

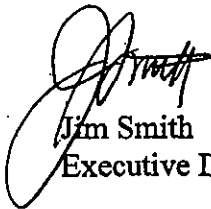
FROM: Jim Smith, Executive Director

DATE: August 4, 2004

SUBJECT: Iron Rock Motorsports, Inc. (on Council agenda 8/5/04, Item #5)

Please find attached additional information in reference to Iron Rock Motorsports that Council requested after last week's meeting.

If you have any questions or would like additional information please contact me at 530-7518.



Jim Smith  
Executive Director

Xc: Toby Futrell, City Manager  
John Stephens, Acting Assistant City Manager

**INFORMATION ATTACHED INCLUDES THE FOLLOWING:**

1. Information on Iron Rock Motorsports, Inc.
2. Iron Rock Motorsports, Inc. community outreach program
3. Information on Superkarting Safety
4. E-mail from Mike Scott, TSA, Federal Security Director
5. City of Austin Insurance Requirements

## **MANAGEMENT TEAM**

### **Richard M. Phillips, President**

Rich Phillips is CEO and owner of Centex Machining, Inc. in Round Rock, Texas. Over the past 25 years, Centex has provided contract-manufacturing services specializing in the production of orthopedic implants, surgical instruments and other medical devices. Mr. Phillips graduated with a B.S. in Industrial Engineering and Management from Oklahoma State University in 1974 and has lived in Austin since 1976. His hobbies include wake boarding, snow boarding, water and snow skiing, tennis and shifter kart racing.

### **Matthew Q. Hainline, Director**

With a solid understanding of business dynamics and 20+ years of successful healthcare and commercial development experience, Mr. Hainline researched rural healthcare needs and demographics, established the business model and founded Blackhawk Healthcare to implement hospital redevelopment projects across the United States.

Mr. Hainline has successfully delivered numerous hospital, clinic and healthcare projects and personally directed multiple endeavors for joint venture partners. His broad-based expertise spans capitalization, renovation, management, acquisition and operations. He has exceptional fiscal skills and the ability to analyze the needs and develop the resources to capture essential financing and drive complex projects to a successful completion.

### **Paul M. Albini, Treasurer**

Mr. Albini is vice president and owner of Expedition, Inc., a general contracting company headquartered in Austin, Texas. Expedition provides commercial and residential construction services throughout North American, Central America and the Caribbean. Mr. Albini is a graduate of the U.S. Naval Civil Construction School and has been a licensed General Contractor since 1992. Mr. Albini has lived in the Austin area since 1995. His hobbies include hunting, fishing, shifter kart racing, and wake boarding.

### **Mike Blissit, Secretary**

Since 1975 Mr. Blissit, has been involved in his family's business, Austin Title Company, which has grown to be the largest title company in Austin. In 1990, Mr. Blissit started Texas Tax Company, a real estate tax information company, servicing the title industry and real estate attorneys. In 2000, he launched MedLink, a 24/7/365 answering service providing a link between the physician, hospitals and patients.

## THE COMPANY

Iron Rock Motorsports, Inc. (referred to as "Iron Rock" or the "Company"), is incorporated under the laws of the State of Nevada, will own, operate and manage a Go Kart (karting) racing club and speedway in Austin, Texas. The Company's primary sources of revenue include membership dues, membership fees and deposits, kart and pro shop sales, parts sales, kart storage, revenues from Go Kart track operations, and races. Our club and speedway will be strategically positioned in central Texas within a short driving distance from five premier markets in the Texas; Houston, Austin, Dallas, Fort Worth, and San Antonio. In our first year of operation, we will be hosting a variety of karting and other motorsports events prior to opening our facilities.

## INDUSTRY OVERVIEW

The "go-kart" phenomenon began in the late 1950s as a fun and affordable form of motorsports with informal parking lot events rapidly growing into organized competition on purpose-built tracks. Since then, the sport has spread around the world, forming a true "grassroots" of motorsports and spawning a multi-billion dollar industry. While the "go" in the name has long since been dropped by those involved with the sport, karting (properly spelled with a "k") has gone on to become a primary recreational activity for an estimated 400,000 plus Americans annually.

Karting can be a relatively inexpensive hobby or a legitimate and sophisticated training ground for those looking to move into other forms of professional motorsports. A majority of today's drivers at the highest levels of racing trace their beginnings to competitive karting. They include Tony Stewart, Sam Hornish Jr, and Sara Fisher, to name just a few. Many others have made karting a life long hobby and/or career.

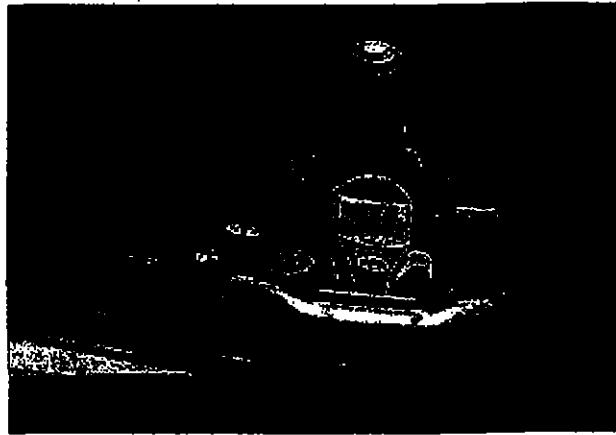
What is a kart? They have no suspension, are about 72" long, 50" wide, and weigh approximately 150 pounds minus the driver. Engines vary from 5 to over 30 horsepower, depending upon the class and are able to reach speeds of over 130 miles per hour. In contrast, vehicles often sold in hardware and auto parts stores aptly called "yard karts" are not equivalent to the types of karts discussed here due to their limitations in capability and performance.

There are two types of karts: sprint and enduro. The sprint kart is the most common type of kart. It normally runs short races on purpose-built, .3-.7 mile paved tracks with left and right turns or on 1/6 to 1/4 mile dirt or paved oval tracks. The specialized kart called an enduro is longer than a sprint kart so the driver may fully recline to minimize wind



## THE COMPANY

resistance. Enduro (road racing) events (including some classes for sprint karts) may be run on "full-size", car-type road courses such as Daytona International Speedway in Daytona Beach, FL and Lowe's Motor Speedway in Concord, NC.



### NOT JUST FOR ADULTS

Organized events are available to individuals beginning at age 5. Formal competitive classes begin at the junior stage (age 8) and generally run in 3-year age groupings until "senior" status is reached (age 15 or 16, depending on the series). Around 45 percent of competitive event entrants are juniors.

Karting offers an excellent way to become introduced to motorsports providing entry levels for racing that are safe, economical, and fun. From the beginner to the experienced veteran, it is a sport that involves the entire family. Perhaps the greatest benefit the entire community derives from karting is the involvement of young people in a healthy, competitive sport which invariably produces better drivers. What better grounding for a boy or girl than a sport where they can develop their confidence and driving skills. This means that these drivers may have years of supervised motoring experience well before they are old enough to qualify for a road license. Karting can be a sport that will give them a good grounding for future development within a motor sport or simply be a fun way to spend their weekends. They will soon be tomorrow's road drivers and karting teaches them car control, defensive driving techniques and an appreciation of other vehicles in close proximity and the dangers of overdriving.

# THE COMPANY

## BACKGROUND AND PHILOSOPHY

Iron Rock Raceway was founded in December of 2003 by a group of karting enthusiasts in Austin, Texas, desiring a local, family-oriented, high-quality racing facility. After performing considerable research, the founders have developed a business plan modeled after a family oriented country club environment, emphasizing quality service and facilities, endeavoring to exceed the expectations of the club's members and guests. Senior management also believes that the Company's success will depend greatly upon the motivation, training and experience of its employees. Since inception, the founders have focused on the assembly of an experienced and committed management team to lead the Company. Attempts to attract and retain this qualified, dedicated management for its facility have proven successful. With twenty collective years of experience in management and karting, the Company is confident in its ability to execute on its plan. Furthermore, the Company will provide extensive training and education for all of its employees, designed to improve and maintain the highest safety and quality of services provided to members and guests. Competitor and spectator safety are of prime consideration to Iron Rock, and a central focus of all governing bodies of karting. Iron Rock will perform regularly scheduled raceway inspections to ensure the most compelling, enjoyable and safe driving experience. Safety officers and track inspectors will be employed by the Governing Bodies to ensure sanctioned races are conducted in the safest environment possible.

The Company's commitment to value will be reflected in its policy of monitoring satisfaction levels through frequent surveys of members and guests. In addition, employees will be surveyed regularly to ensure management is continuing to develop appropriate training and education programs, increase job satisfaction levels and improve the quality of service.

The Company strongly believes that its member-oriented philosophy will be a critical success factor in attracting and retaining active club members. Underlying this philosophy are progressive human resource values and goals which the Company believes will result in superior customer service. The Company's managers and employees will participate in extensive, internally developed and administered training and educational programs. Management believes that its member-oriented philosophy and culture will clearly set it apart from most competitors that focus on short-term returns, often compromising member satisfaction and long-term profitability.



## **AUSTIN COMMUNITY TIES**

In April of 2004, Iron Rock Raceway asked Big Brothers Big Sisters of Central Texas if they would like to participate in the Austin Grand Prix by bringing some of their mentors and children out to this regional race held at Highland Mall in June. Iron Rock was the primary sponsor of the Austin Grand Prix, and Saturday, June 5 of the race was declared Big Brothers Big Sisters Day. The BBBS participants were given all the privileges of those who had paid for VIP badges, including refreshments, access to the VIP tent, T-shirts and personal tours of the VIP pit areas.

Iron Rock Raceway also offered to begin a long-term relationship with BBBS once a permanent track was established. This relationship might include opportunities for children to race at no cost at select times, receive mechanical training at the club's on-site workshop, attend special events and more. The BBBS Events Coordinator has expressed interest in pursuing this relationship.

### **About Big Brothers Big Sisters of Central Texas**

Big Brothers Big Sisters of Central Texas is an Austin-based organization that builds mentoring relationships between adults and children that deliver proven, tangible results that last a lifetime. These quality relationships have proven in studies to significantly increase the quality of life for participating children while significantly decreasing their chances of truancy, violence, and drug or alcohol use.

Big Brothers Big Sisters of Central Texas currently serves the children of Travis, Williamson and McLennan Counties.

Contact:  
Jennifer Grimsley  
Events Coordinator  
Big Brothers Big Sisters of Central Texas  
(512) 472-5437 ext. 218  
[jgrimsley@bbbscentraltx.org](mailto:jgrimsley@bbbscentraltx.org)

## SUPERKARTING SAFETY

Because of the many precautions taken, superkarting is a relatively safe sport.

- Four-wheel floating rotor disk brakes, tunable suspension components and redundant systems provide a level of safety comparable to systems found in Indy and Formula 1 racecars.
- The front bumper is designed to absorb impact and the steel frame railing creates a safety box around the driver's feet, lessening the chance for damage in a crash.
- The side pods and nerf bars protect the driver and create a collapsible zone that absorbs energy in the event of an impact and reduces the chance of wheel entanglement with other karts.
- Before a kart is allowed on the racecourse, it must pass a rigid technical inspection by race officials. This inspection includes a 25-point checklist to assure that the kart and its systems comply with the latest safety requirements. The driver's personal equipment (helmet, race suit, gloves, shoes) also is inspected for safety compliance.
- Like Indy and Formula One racing, the drivers wear fire-retardant padded driving suits, special driving shoes and gloves, a helmet, neck brace and rib protection vests.
  1. Modern Snell 2000 rated helmets are required in superkart competition.
  2. A neck collar is worn around the neck to limit head motion in the event of a serious crash
  3. Inside the driving suit, a Kevlar rib protector is worn to guard against chest and rib damage
- Superkart racing is a non-contact sport. Any driver who intentionally bumps, pushes or touches another car on the racecourse is black-flagged, penalized and immediately removed.
- The Iron Rock racecourse will be lined with TechPro Barriers. TechPro Barriers are interlocking polyethylene blocks connected by double nylon straps that provide outstanding protection to the karts and drivers in the event of a collision. TechPro was developed in Europe specifically for superkart racing.
- Michiana Raceway Park (MRP Inc.) a racekarting school in Buchanan, Michigan, has recorded two serious injuries since it opened in 1987. Both were broken collarbones. According to owner Garry Lobaugh, the most common injuries are minor burns associated with careless customers touching hot kart pipes.
- According to the National Karting Association (NKA), out of more than 300,000 participants on average over the last five years, there have been 125 claims per year from all forms of kart racing. This equates to roughly one claim per 2400-3000 participants. A claim can be anything from a scratch on an arm, to something more severe.

(more)



- A track in the NKA system usually averages 120 participants, with a season averaging 15 events. This equates to an average of 1800 participants per track per year. One of these tracks might realize a claim, on average, once every two to three years.
- NKA is the largest sanctioning body for small vehicle racing in the United States, processing well over 300,000 participants (a participant is anyone in the pit area or race track) at more than 300 facilities through the NKA system in a single calendar year.
- NKA attributes its low claim rate to quality underwriting of the facilities in its system, and safety requirements for the facility and for the participants.
- For more information about NKA, please contact:

Joe Janowski  
President  
NKA, Inc.  
317.774.7021 Phone  
317.774.7029 Fax

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# **Birel N 35-X Endurance Series Go Kart THE KART FOR RENT ENTERS THE FUTURE**

*(Note: Birel is one of the world's leading kart engine manufacturers.  
The following article is reprinted from the Birel website.  
([http://www.birel.it/uk\\_serie\\_n.htm](http://www.birel.it/uk_serie_n.htm))*

The offer and the vehicles for rent available in most plants worldwide are characterized by essential technical features and by a look, which is definitely not very attractive. This is due to the stresses the vehicles for rent are subject to, not to mention that all manufacturers of karts for rent have always preferred to reinforce and adapt racing karts by making use of devices that are often unaesthetic rather than develop a specific project.



Entering this market segment, our company has thought it advisable to follow a different and not-conventional way, by manufacturing a product characterized by special technical features for this specific activity as well as by a sophisticated design. These features make the frame N

35-X a definitely state-of-the-art vehicle. So we decided to manufacture a different product if compared to the competitors, and we were not happy to obtain a better product only. Birel frame N 35-X is the result of a careful market analysis which takes into account not only the indications and the experiences of the major companies managing karts for rent but also the customers expectations who are becoming more and more demanding.

The Kart manufactured by our company reduces considerably the technical and aesthetical gap existing between a kart for rent and a racing kart, and this feature can be detected with satisfaction even by less expert users. The "entertainment" market, the renting activity can be linked to, is more and more sensitive to the innovations and looks for new chances. This trend offers an opportunity for the operators as well, if they are able to guarantee a satisfactory product with the relevant service. For example, with new Birel karts it is possible to arrange company events or Grand Prix among friends, increasing the satisfaction level of a larger and more demanding number of users. And of course the customers' satisfaction is an essential resource, first of all



because they get back to you and also because they act as opinion leaders. The customers satisfaction and the establishment of fidelity relationships with them are the trumps, in particular in those geographical areas which do not benefit from considerable tourist flows. To embrace this philosophy, our Sales Management will guarantee a direct support for all operators, working out tailor-made purchasing solutions to meet all specific requirements, besides guaranteeing an effective after-sale service. Entrepreneurs have often to make strategic choices, which can guarantee innovation and new opportunities for their own activities. At these stages the strategic move consists in anticipating the competition.

### MORE SAFETY

The renting activity is linked to large numbers. There are thousands of people using the vehicles owned by the tracks and most of them have no driving experience on such racing tracks. The guarantee of the maximum safety level is essential for managing companies and so we worked out a specific solution to achieve this target. The pods can soften and absorb heavy impacts and they also avoid the dangerous accidental contacts among the wheels. But to guarantee the safety of the driving seat as well, special devices were arranged, such as the seat basket, which is particularly protective. The data collected in the hundreds of hours spent during endurance rounds and in the plants which have already adopted Birel karts, have guaranteed very high safety standards and the cancellation of the few cases involving physical consequences for the users.

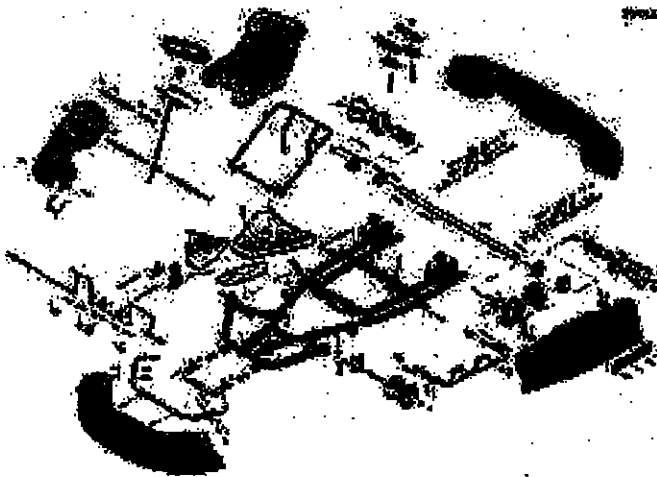


### LOWER MAINTENANCE COSTS

The high reliability of any components reduces very much the replacement of mechanical parts and accessories, and the advantage is also considerable as far as labour costs are concerned. Thanks to the reliability of this kart even the number of overhauls is almost cut by half, if compared to a traditional kart for rent. Moreover, all routine interventions are quicker and easier thanks to a project designed to be simple and functional.

### THE KART

The kart N 35-X is the result of a careful analysis on the sector of vehicles for rent which started five years ago by means of market research carried out on the most prominent



racing tracks in Italy and in Europe. Since then, this kart, which was already technologically advanced and also ahead of its time as far as safety, practicality and comfort were concerned, has been developed through simple but essential updates which make it unique of its kind.

The hard tests carried out in the development phase and its application during the Endurance Championship determined a continuous improvement of the project both from a technical and performing point of view and in particular regarding safety and reliability. Now, thanks to the application of the new pods (integral protection system with impact absorption device) the project is definitively completed.

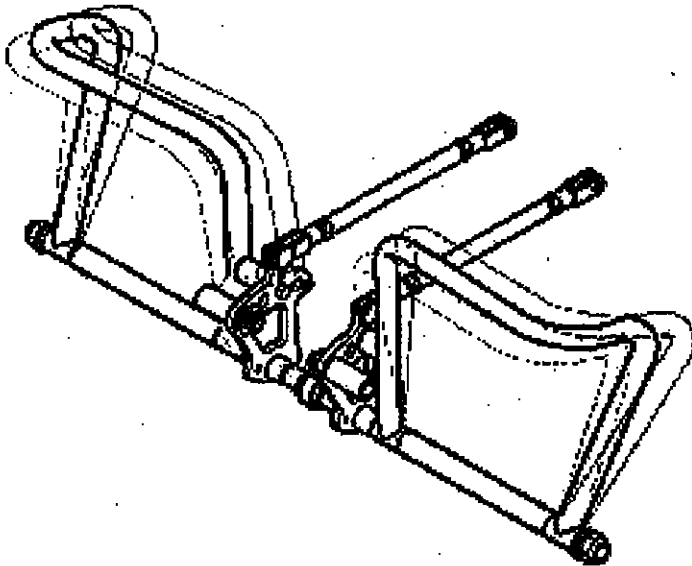
## THE FRAME

The frame is made of a high resistance chrome-molybdenum steel tube with a diameter of 35 mm and a thickness of 2 mm. Specific studies and tests determined the points which are more subject to the stresses, where special reinforcements made of sheet steel will be installed. The computerized project was developed by making use of the most modern design systems, as in the case of racing karts. The frame geometry is symmetrical to obtain an optimal weight distribution taking into account the application of hard tyres. These characteristics guarantee a high structural sturdiness and much reduced weights, in favour of a better practicality and easy driving even for those drivers who are still very beginners. The original design of the forecarriage includes a flatbed divided into three distinct parts and also wide room for the driver's legs who can enjoy a real comfort. On the contrary in the rear axle there are 4 supports for the axle bearings in order to guarantee a better structural resistance and functionality.

## PEDAL AND STEERING

The adjustable pedal: the old problem concerning the different heights of the several people driving the karts has been finally solved. By means of a simple but refined transmission system of the gas pedal control and of the brake pump leverage you can

obtain up to 10 cm, which correspond to a height difference ranging between about 1,60 m and 1,80 m.



The drag links: they have been manufactured by making use of a special tied plastic material, which is particularly sturdy and elastic at the same time, and can withstand very violent impacts without breaking (up to over 60 kg of transversal load). The Uni-bals which connect the steering columns to the spindles are screwed on special anodized aluminium bushings of different

colours (silver right screw thread and golden left screw thread) in order to make also the convergence adjustment very easy.

The Spindles: they are the essential elements characterizing the forecarriage, the connection point of front wheels, through which the kart can be driven. They have been expressly manufactured to withstand a continuous and hard use, their body is made of precision casting steel, the lever is composed by two parts which have been forged and electrowelded to make the whole detail sturdy but light at the same time.

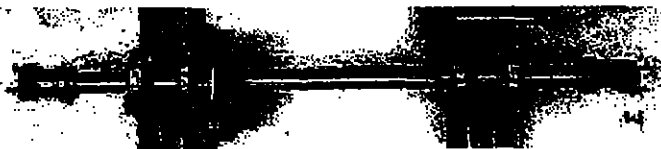
The stem is the most delicate detail, which is more subject to impacts and is made of C40 steel. On purpose this is the point absorbing the energy of the most violent impacts and actually it bends not to damage the frame. It can be withdrawn and easily replaced. The spindle is fastened to the frame by means of a 12 mm nut screw and two balls.

### SEAT AND AXLE



The seat: it is very large and sturdy, is made of fibre glass impregnated with epoxy resin with turned finish on both sides (inner side and outer side) which make cleaning operations extremely easy and is connected to the frame by means of an easily removable basket, if maintenance is needed. Comfort and safety are the features characterising this project, specifically designed for the customers using the karts for rent.

The axle: it is made of a special steel tube with a diameter of 40 mm and a thickness of 5 mm, supported by four bearings. The total length is 1080 mm and allows the hubs to trig for a much wider surface, while the keys, especially manufactured with a step the hub leans on, avoid those dangerous movements caused by the intensive use.



### BRAKING SYSTEM



Braking system: it is hydraulic, self-adjusting and expressly designed for an intensive use. The pads have large dimensions, their compound is suitable for extremely heavy loads and the maintenance is very easy. Actually for their replacement you only have to disassemble two pins and remove them from the rear of the caliper. The system operating the pump adopts a mechanical idle stroke in order to avoid any possible useless operation of the pump

itself by those less experienced drivers who normally tend to lean their foot on the brake pedal.



### PODS

They complete the product with style, guaranteeing a very high safety level. The design is sophisticated and the vehicle is characterized by a harmonious and attractive look. But certainly the essential feature defining the pods is



their effectiveness as far as safety is concerned, both for all technical components of the frame and for the driver. They are made of a special plastic material which guarantees optimal impact absorption and also low weight. The supports, which are made of steel and integrated into the pod, have been designed very carefully because they actually absorb the heaviest part of the impact. A further reduction of the impact energy is guaranteed by the rubber pads installed on the frame. The tyres are placed inside compared to the pods and so the problem of the dangerous accidental contacts between the tyres is definitively over. In order to have always an

excellent look, a special Kit with high-resistance labels washable with solvents was designed as well. In addition to the protection function and, if necessary, to the possible aesthetical renewal of the karts thanks to the wide range of available colours, operators can also present their vehicles with different looks.

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**Ramirez, Janie**

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**From:** Scott, Michael [mike.scott@dhs.gov]  
**Sent:** Friday, July 30, 2004 10:24 AM  
**To:** Janie.Ramirez@ci.austin.tx.us  
**Subject:** Proposal - Iron Rock Raceways

Janie,

The purpose of this email is to provide my comments regarding security issues raised by the possible lease of airport property to the Iron Rock Raceways.

Based on the information provided by Mr. Rich Phillips in our meeting yesterday, I am satisfied that his proposal for a superkart track in the area of the current employee overflow parking lot, does not pose an increased security risk for AUS. As a matter of fact, after reviewing the plans and designs for the track, I am of the opinion that his proposal will actually enhance our current security posture along the airport perimeter.

Additionally, Mr. Phillips appears to very willing to work with the Airport Police Department and TSA to address any security concerns that may arise as this project moves forward.

If you or anyone has any questions, please do not hesitate to contact me.

*Mike Scott*

Federal Security Director  
Austin-Bergstrom International Airport  
512-851-6350 (office)  
512-417-4016 (cell)

**EXCERPTS FROM THE PROPOSED LEASE  
AGREEMENT BETWEEN CITY OF AUSTIN AND  
IRON ROCK MOTORSPORTS, INC.  
REFERENCING  
INSURANCE REQUIREMENTS**



OR TRANSPORTATION OF HAZARDOUS MATERIALS ON THE PREMISES OR AT THE AIRPORT DURING THE TERM OF THIS LEASE, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY TENANT PERTAINING TO TENANT'S USE OR OCCUPANCY OF THE PREMISES DURING THE TERMS OF THIS LEASE, OR THE FAILURE OF TENANT TO COMPLY WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS SECTION. BUT TENANT SHALL HAVE NO OBLIGATION TO INDEMNIFY OWNER FOR ENVIRONMENTAL CLAIMS TO THE EXTENT ARISING FROM OR CAUSED BY ENVIRONMENTAL CONDITIONS EXISTING ON THE PREMISES PRIOR TO TENANT'S OCCUPANCY OF THE PREMISES. THE FOREGOING INDEMNITY SHALL NOT APPLY TO ENVIRONMENTAL CLAIMS TO THE EXTENT THEY ARISE FROM ENVIRONMENTAL CONDITIONS (1) EXISTING ON THE PREMISES PRIOR TO THE EFFECTIVE DATE, OR (2) ORIGINATING FROM PROPERTY OUTSIDE THE PREMISES.

- E. Removal. Prior to the end of the term or earlier termination of this Lease, Tenant shall remove or remediate in accordance with applicable Environmental Laws and the Airport Environmental Rules and Policies, all of Tenant's Hazardous Materials from the Premises, the Airport, and surrounding lands and waters. Unless instructed otherwise by the Owner, Tenant shall also, prior to vacating the Airport, remove all tanks, piping and other equipment which stored Hazardous Materials, or which are contaminated by Hazardous Materials. Tenant's responsibilities under this paragraph shall not extend to any Environmental Conditions existing on, in or arising from the Premises (or property adjacent or contiguous to the Premises) prior to Tenant's occupancy of the Premises.
- F. Compliance with Federal and State Storm water Requirements. Tenant acknowledges that the Airport has represented that it is subject to the National Pollution Discharge Elimination System Program ("NPDES") and Federal Storm water Regulations (40 CFR Part 122) and the Texas Pollution Discharge Elimination Program ("TPDES"). In its operations at the Airport, Tenant shall comply with all applicable provisions of NPDES, TPDES, Federal and State Storm water Regulations, and the SWPPP, as they may be amended from time to time, in accordance with all applicable Environmental Laws.
- G. Survival. The covenants, conditions, and indemnities in this Section shall survive termination of this Lease. Tenant shall expressly include the provisions of this Section in all subleases.

## 16. INSURANCE

Tenant will, at its cost and expense, throughout the term of this Lease obtain and maintain in full force and effect the policies of insurance described on **Exhibit D**, attached hereto, and incorporated herein with respect to the Premises. Insurance provided by Tenant shall be primary coverage for all losses.

## 17. INDEMNITY

- A. Indemnity. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (A) ANY BREACH OF THIS LEASE BY TENANT, ANY SUB-TENANT, AND THEIR RESPECTIVE AGENTS, EMPLOYEES, OR CONTRACTORS, (COLLECTIVELY THE "TENANT PARTIES") (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE TENANT PARTIES HEREUNDER, (C)

ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE TENANT PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE PREMISES, OR (D) THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTIES. CLAIMS EXPRESSLY INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS ASSERTED BY ANY TENANT PARTY, OR TENANT'S MEMBERS, GUESTS, INVITEES, AND SPECTATORS FOR BODILY INJURY, DEATH, LOSS OF SERVICES, AND LOSS OF INCOME OR EARNING CAPACITY, ARISING OUT OF OR RELATED TO ANY ACTIVITY CONDUCTED ON THE PREMISES BY A TENANT PARTY UNDER THIS LEASE. Tenant shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against any of the Indemnified Parties. Maintenance of the insurance required under this Lease shall not affect or limit Tenant's indemnity obligations. Tenant may contest the validity of any Claims, in the name of Owner or Tenant, as Tenant may in good faith deem appropriate, provided that the expenses thereof shall be paid by Tenant and Tenant shall maintain adequate insurance to cover any loss(es) which might be incurred if such contest is ultimately unsuccessful. In no event may Tenant admit liability on the part of Owner without the expressed prior written consent of the Austin City Attorney.

- B. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE, DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF TENANT'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.
- C. Claims Against Tenant. In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Tenant arising out of or concerning this Lease or the Premises, the Tenant shall give written notice thereof, to the Owner within two (2) working days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims, and if the claim is not written or the information is not discernable from the written claim, state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the Austin City Attorney, 114 West 7<sup>th</sup> Street, Austin, Texas 78701, and to Owner.

#### 18. AVIGATION RIGHTS

- A. Tenant understands and acknowledges that the Premises are located adjacent to an active airport runway, that the Premises are subject to over flights of aircraft taking off or landing at the Airport, and that the Premises is currently, and will in the future, be subject to aircraft noise levels of DNL 65dB or greater, as well as vibration, air pollution, and other effects from the flight of aircraft near or over the Premises.
- B. Owner reserves the right of flight for the passage of aircraft above the surface of the Premises hereunder in accordance with Federal Aviation Administration criteria, and such right of flight shall include the right to cause in such airspace such noises as may be inherent to the operation of aircraft now known or hereafter used for navigation of or flight in the air; and that Owner reserves the right to use said airspace for landing at, taking off from or operating aircraft on or over said Airport.

## **EXHIBIT D**

### **INSURANCE REQUIREMENTS**

- A. Tenant shall carry insurance in the following types and amounts for the duration of this Lease, and furnish certificates of insurance as evidence thereof.
- (1) Commercial General Liability insurance with a minimum bodily injury and property damage per occurrence limit of \$10,000,000 for coverage's A & B. The policy shall contain the following provisions:
    - a. Blanket contractual liability coverage for liability assumed under this contract.
    - b. Independent Contractors Coverage
    - c. Medical expense coverage with a limit of \$5,000 for any one person.
    - d. The City shall be listed as an additional insured, endorsement CG2010.
    - e. Thirty (30) day notice of cancellation in favor of the City, endorsement CG0204.
    - f. Waiver of Transfer of Right of Recovery Against Others in favor of the City, endorsement CG2404.
    - g. Fire Legal Liability with minimum limits of \$50,000.
  - (2) Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The following provisions shall apply:
    - a. City shall be listed as an additional insured, endorsement TE 9901B
    - b. Waiver of Transfer of Rights of Recovery Against Others in favor of the landlord, endorsement TE 2046A.
    - c. Thirty (30) Day Notice of Cancellation in favor of the City, endorsement TE 0202A.
  - (3) All risk Property Damage coverage for the full replacement value of the Premises.
  - (4) All Risk Builders Risk insurance coverage covering all construction activities on the Premises by Tenant, or its contractors and subcontractors.
- B. General Requirements
- (1) This Lease shall not be effective until Tenant has obtained the required insurance and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of Tenant hereunder.
  - (2) If insurance policies are not written for amounts specified above, Tenant shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
  - (3) Tenant shall be responsible for deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificates of insurance required above.
  - (4) Any coverage written on a "claims made" basis shall carry a retroactive date, which coincides with the date of this Lease. This insurance shall be maintained for the duration of this Lease and for six months following completion of the services under

this Lease. The policyholder shall pay for the premium for any extended reporting period.

- (5) Insurance shall be written by companies in good standing with the Texas Department of Insurance and shall be written by companies with an A.M. Best rating of B+ or better or otherwise acceptable to the City.
- (6) The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Lease, covering the City and Tenant shall be considered primary coverage as applicable.
- (7) All additional insureds and thirty (30) days notice of cancellation endorsements as well as certificates shall indicate: The City of Austin, Department of Aviation, 3600 Presidential Blvd. Suite 411, Austin, Texas 78719.
- (8) The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- (9) The City reserves the right to review insurance requirements of this section during the effective period of this Lease and to make reasonable adjustments to insurance coverage's and their limits when deemed necessary and prudent by the City based upon changes in statutory law.
- (10) Tenant shall provide the City thirty (30) days written notice of erosion of aggregate limits below occurrence limits for all applicable coverage's indicated within the Insurance Requirements section of this Lease.
- (11) Tenant shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Lease.
- 12) Tenant shall pay actual losses not covered by insurance as required by the Lease.

Janie Ramirez  
City of Austin  
Department of Aviation  
3600 Presidential Blvd.  
Austin, TX 78719

Janie -

The attached is a faxed copy of the "Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement" that is issued by NKA (National Karting Alliance). Each driver and each race team crew member is required to acknowledge and sign this document prior to participating in any type of karting activity.

NKA is the primary insurance underwriter for a majority of the karting events in the United States. Iron Rock Raceway will use NKA as one piece of its liability coverage once opened for business.

If you have any questions regarding how NKA operates you can learn more by checking their website at [www.nkaonline.com](http://www.nkaonline.com).

Sincerely,



Rich Phillips, President  
Iron Rock Raceway

# **RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT**

DESCRIPTION AND LOCATION OF SCHEDULED EVENT(S)

DATE RELEASE SIGNED

CONSIDERATION of being permitted to compete, officiate, observe, work for, or participate in any way in the EVENT(S) or permitted to enter for any purpose any RESTRICTED AREA (defined as any area requiring special authorization, inside, or permission to enter or any area to which admission by the general public is restricted or prohibited), EACH OF UNDERSIGNED, for himself, his personal representatives, heirs, and next of kin:

knows, agrees, and represents that he has or will immediately upon entering any of such RESTRICTED AREAS, and continuously thereafter, inspect the RESTRICTED AREAS which he enters, and he further agrees and warrants that, at any time, he is in or about RESTRICTED AREAS and he feels anything to be unsafe, he will immediately advise the officials such and if necessary will leave the RESTRICTED AREAS and/or refuse to participate further in the EVENT(S).

REBEY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE the promoters, participants, racing associations, sanctioning organizations or any subdivision thereof, track operators, track owners, officials, car owners, valet crews, rescue personnel, any persons in any RESTRICTED AREA, promoters, sponsors, advertisers, owners and lessors of premises used to conduct the EVENT(S), premises and event inspectors, surveyors, underwriters, consultants and others who give recommendations, directions, or instructions or engage in risk evaluation or loss control activities regarding premises or EVENT(S) and each of them, their directors, officers, agents and employees, all for the purposes herein agreed to as "Releasees," FROM ALL LIABILITY TO THE UNDERSIGNED, his personal representatives, assigns, heirs, and next of kin FOR ANY AND ALL LOSS OR DAMAGE, AND ANY CLAIM OR DEMANDS THEREFOR ON ACCOUNT OF INJURY TO THE PERSON OR PROPERTY OR RESULTING IN DEATH OF THE UNDERSIGNED ARISING OUT OF OR RELATED TO THE EVENT(S), WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.

REBEY AGREES TO INDEMNIFY AND SAVE AND HOLD HARMLESS the Releasees and each of them FROM ANY LOSS, LIABILITY, DAMAGE, OR COST they may incur arising out of or related to the EVENT(S) WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.

REBEY ASSUMES FULL RESPONSIBILITY FOR ANY RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE arising out of or related to the EVENT(S) whether caused by the NEGLIGENCE OF RELEASEES or otherwise.

REBEY acknowledges that THE ACTIVITIES OF THE EVENT(S) ARE VERY DANGEROUS and involve the risk of serious injury and/or death and/or property damage. Each of THE UNDERSIGNED, also expressly acknowledges that INJURIES CAUSED MAY BE COMPOUNDED OR INCREASED BY NEGLIGENT RESCUE OPERATIONS OR PROCEDURES OF THE RELEASEES.

REBEY agrees that this Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement extends to all acts of negligence by the Releasees, INCLUDING NEGLIGENT RESCUE OPERATIONS and is intended to be as broad and inclusive as is permitted by the laws of the Province or State in which the Event(s) is/are conducted and that if any portion hereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I READ THIS RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT, FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE DONE IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE OR GUARANTEE BEING MADE TO ME. I INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE EXTENT ALLOWED BY LAW.

ALL SECTIONS MUST BE COMPLETED.

PRINT NAME HERE

SIGN NAME HERE

DUTIES

SIGNATURE AND TITLE OF WITNESS

ADDRESS OF WITNESS

*Sample  
To be used @  
Haw Rock*