

MSR HOUSTON LLC

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Angleton, Texas 77515

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MSRH Houston

Membership Agreement

This Agreement, when signed by the Applicant ("Member") and accepted by MotorSport Ranch Houston LLC ("MSRH"), together with Membership Application which is incorporated into and is integral to this Agreement, and the MotorSport Ranch Houston Rules & Regulations as may be in effect from time to time, as specified below, shall constitute the full Agreement between MSRH and Member with respect to Member's use of the road course, paddock, vehicle dynamics area, clubhouse and related facilities of the MotorSport Ranch Houston (MSRH).

This Agreement contains release and indemnification provisions and limitations on MSRH liability. You are urged to read it carefully, as you may be waiving certain rights.

MSRH is a privately owned motor sports park available for the use of Member pursuant to this Agreement. MSRH also will be available to members and non-members for special events scheduled by MSRH.

Memberships afford Member a license to make recreational use of MSRH facilities on a priority basis. Payment of the Initiation Fee and dues does not grant Member any ownership rights in MSRH or in MSRH or its facilities, or any rights of use or access not specifically set out in this Agreement. Membership does not give a member the right to use MSRH facilities at all times. The use of MSRH facilities will be restricted at certain times during the year, for example during special events. MSRH, in its sole discretion, reserves the right to refuse use of MSRH facilities to any person.

Membership should not be viewed or acquired as an investment, and persons purchasing a membership should not expect to derive any economic benefit from their purchase. Memberships are not transferable. A Member shall in no way be liable for any obligation of MSRH or any other Member.

The purpose of this Agreement, which is legally binding on MSRH and Member, is to set out the terms and conditions upon which Member will be entitled to use the facilities of the MotorSport Ranch Houston, and certain rights and obligations of the parties with respect thereto.

1. MEMBERSHIP AGREEMENTS

1.1 *Membership Classes and Benefits.* There are four levels of membership; the Platinum Membership, Gold Membership, Silver and the annual membership. The membership entitles members to access the facility and use of the 2.4 mile road course on any day the track is not rented or closed for maintenance. The Annual membership entitles the member to access like the above listed memberships with the exception of the fact that the membership expires after 12 months. An annual member will be allowed to upgrade to any of the above listed memberships during the first 12 months or at the end of the initial term by paying the difference of the annual membership and the level the member is upgrading to any other level of membership.

MSRH reserves the right to establish additional membership classes at any time, at its sole discretion, and to offer other and different types or classes of memberships. If offered, Member shall have the right, at his, her or its option, to convert Member's membership class to any type or class offered for which Member qualifies, and the initiation fee previously paid shall be applied to any initiation fee charged for such membership. Unless otherwise specified in this Agreement, under no circumstance will Member be entitled to a refund of his, her or its initiation fee.

Member will enjoy:

- Track privileges up to 30 weekends per year (Friday through Sunday), subject to reservation requirements and track availability.

- Reciprocity with other MSRH Facilities and Affiliates, subject to scheduled member days, daily fees, and policies of the reciprocating facility. Note that at least 80% of member days must be utilized at your home track.

1.2 *Initiation Fee and Dues.* The initiation fee, current monthly dues and other fees applicable to the various membership classes are set forth in *Attachment A*. The amount of the initiation fee of new members and the amounts of the monthly dues and other charges applicable to the various membership classes, and the manner of their payment, is subject to change in the sole discretion of MSRH. Any revisions to the membership terms made by MSRH shall be automatically incorporated into and made a part of this Agreement. The timely payment of dues and other charges incurred by Member or Member's guests is a condition to the use of the facilities by Member and its Family Members and guests.

1.3 *Track sessions.* Peak sessions are from Friday through Sunday, and off-peak sessions are from Monday through Thursday. Sessions will be defined by class of vehicle and number of participants. Classes of vehicles for example are motorcycles, racecars, sport cars and open wheel vehicles.

1.4 *Reservation Requirement.* Member does not need to make reservations; however, it is recommended that the member view the calendar on line or call the track prior to arriving to ensure the track's availability.

1.5 *Paddock and Garage Rentals.* Paddock and garage rental space will be made available for an additional fee. The rental costs for paddock and garage space are subject to change in the sole discretion of MSRH.

1.6 *Limitations on Access.* Member understands and acknowledges that the rights granted in this Agreement do not limit the right of MSRH to offer use of the facility for any other purpose. Access to and use of all facilities of MSRH by members and non-members is subject to regulation by MSRH. Member is guaranteed access to the track for up to 30 weekends per year to be designated by MSRH. Access by Member to the track on other weekends and during the week may be limited, depending on events scheduled by MSRH.

1.7 *No Transfer of Membership.* A membership is personal to Member only, and Member may not transfer his or her membership at any time. MSRH shall have the right to suspend the rights and privileges of any Member who advertises the sale of his or her membership or attempts to transfer his or her membership in violation of this provision.

1.8 *Family Members.* Family Members (defined as spouse and children sharing the Member's household) can be added at one-half of the current initiation fee and monthly dues. Session fees stay the same. Such Family Members shall enjoy the privileges of membership contained in this Agreement so long as they meet the requirements contained in this Agreement and the Member consents to their continuing to enjoy such privileges.

1.9 *Personal Property.* Each Member, Family Member and guest is responsible for his or her personal property. MSRH is not responsible for lost property or property stolen from anywhere at MSRH facilities, and specifically disclaims any such responsibility. Personal property left at MSRH facilities and not claimed within 30 days shall be considered abandoned and may be disposed of by MSRH without notice. No bailment is intended, nor created, by the foregoing sentence.

2. Liability for Use of Property

Member is responsible to MSRH for damages to the facilities caused by Member and his, her or its Family Members and guests, whether resulting from negligence or other cause.

3. Conditions to Use of the Road Course

3.1 *Medical.* Member's physical and mental condition must be such as to allow him or her to use the road course without creating undue or unusual risk to Member or other persons. MSRH may establish regulations regarding the medical condition of persons who use the road course and may require Member and/or his, her or its invitees to provide a letter from such person's physician, or a physician selected by MSRH, confirming that such person is fit to use the road course.

3.2 *Age.* No person under the age of 18 shall be permitted to use the road course without special authorization from MSRH and a duly executed and notarized parental waiver and release.

3.3 *Other Restrictions.* In the interests of the safety of members and others, MSRH may from time to time establish regulations limiting or restricting the rights of members and other persons to use the road course.

3.4 *Waivers and Releases.* All members, Family Members and their guests will be required to sign an insurance and liability waiver and release and an agreement to indemnify MSRH and other releasees in substantially the form attached to this Agreement as *Attachment B*, as the same may be amended from time to time.

3.5 *Driver Qualifications.* All drivers must have a valid driver's license issued by an appropriate governmental authority. In addition, in order to use MSRH facilities, each driver must have appropriate racing body license, driver school experience and certification or otherwise be certified as qualified to operate a vehicle on a close circuit course. MSRH will have the right to verify each driver's qualifications and to reject any driver who does not have acceptable qualifications.

4. Advertising and Promotion Release

MSRH, its duly authorized agents and assigns, may use Member's name and likeness and photographic, videotape and other images of Member, his, her or its Family Members and guests or their motor vehicles in any way and for any lawful purpose, and Member hereby relinquishes all rights thereto.

5. Indemnity, Warranties, Remedies, Limitation of Liability

5.1 *Acknowledgment.* **Member acknowledges and agrees that:**

5.1.1 **Use of the facilities is for the sole benefit of Member;**

5.1.2 **Use of the facilities is hazardous and involves extraordinary risk of serious personal injury or death, as well as the risk of damage to property;**

5.1.3 **Member freely and willingly accepts and voluntarily assumes all risks of property damage, personal injury or death in connection with Member's presence at MSRH and the use of MSRH facilities, and the presence at MSRH and use of MSRH facilities by his or her Family Members or other invitees;**

5.1.4 **MSRH has based the charges for membership in MSRH and the use of its facilities on the premise that none of Member, Member's Family Members, Member's invitees, nor anyone asserting rights on his, her or their behalf, will bring any claim against MSRH or other releasees (as defined below), or challenge the right of such person's to be indemnified as provided in this Section 5; and**

5.1.5 **The nature of the services to be provided under the terms of this Agreement make it appropriate, equitable and essential to provide for the allocation of the**

risks and liabilities, the limitation of remedies, and the indemnification of MSRH and the other releasees, all as set forth in this Section 5.

5.2 *Observation of Conditions.* In consideration of being permitted to enter any restricted area (herein defined as including but not limited to the racing surface, pit areas, infield, vehicle dynamics area, paddock area, garages and all walkways and other areas appurtenant thereto), or being permitted to make use of MSRH facilities, Member, for Member, Member's invitees and Member's personal representatives, heirs and next of kin, acknowledges, agrees and represents that Member will, immediately upon entering any restricted area, and continuously thereafter, inspect such restricted area or areas, and Member's continuing use of the facilities constitutes an acknowledgement that Member has inspected such restricted area or areas and accepts the same as being safe and reasonably suited for the purpose of Member's use, and Member further agrees that if at any time Member believes the restricted areas or any other part of the facilities to be unsafe, Member will immediately leave the facility and advise an appropriate representative of Member's observations.

5.3 . *Covenant Not to Sue.* **Member hereby releases, waives, discharges and covenants not to sue MSRH, its other members, car owners, drivers, pit crews, track workers, any persons in any restricted area, promoters, sponsors, advertisers, and each of them, their respective officers, directors, employees, agents and representatives (herein referred to as "releasees") from all liability to Member, Member's 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 Member's person or property or resulting in the death of Member, whether caused by the negligence of the releasees or otherwise while Member is in or upon the restricted area competing, observing or for any other purpose whatsoever making use of the facilities.**

5.4 . *Indemnification.* **Member hereby agrees to indemnify and save and hold harmless the releasees and each of them from any loss, liability, damage, or cost they may incur due to the presence of Member or any of Member's invitees in or upon the restricted area while competing, observing or for any other purpose whatsoever making use of the facilities, regardless whether caused by the negligence of any of the releasees or otherwise.**

5.5 *No Warranty.* **The facilities and all aspects of membership in the MotorSport Ranch Houston are made available to you "as is", and MSRH makes no warranty as to their use or performance.** Except to the extent any warranty, representation, term or condition cannot or may not be excluded or limited by law, MSRH makes no warranty or representation (express or implied, whether by statute, common law, custom, usage or otherwise) as to any matter including without limitation merchantability, satisfactory quality, or fitness for any particular purpose.

5.6 *Limitation of Liability.* **To the maximum extent permitted by applicable law, in no event will MSRH or the other releasees be liable to you for any damages, claims or costs whatsoever or any consequential, indirect, incidental or special damages, or any lost profits or lost savings, under any legal theory of liability arising out of this Agreement or the use of or inability to use the facilities, even if a MSRH representative has been advised of the possibility of such loss, damages, claims or costs or if such possibility was reasonably foreseeable. The foregoing limitations and exclusions apply to the extent permitted by applicable law. MSRH's aggregate liability under or in connection with this Agreement shall be limited to the sum of \$1,000. MSRH is acting on behalf of all releasees for the purpose of disclaiming, excluding and limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose.**

6. Payment of Dues and Other Charges

6.1 *Payment.* Initiation fees are due on execution of this Agreement. Following opening of MSRH facilities for recreational use, dues, and all sums charged to Member's account on or before the last day of each month shall be due and payable to MSRH on or before the 15th day of the next following month, or on such later date as MSRH may choose to specify. A late fee in an amount to be fixed from Membership Agreement

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time to time shall be payable to MSRH for each month by which a Member's account is delinquent, not to exceed the maximum lawful rate.

6.2 *Delinquency.* MSRH may suspend the rights and privileges of any Member whose account is more than 60 days delinquent. Until such time as a Member's membership has been terminated, a Member who is suspended for non-payment of indebtedness shall have the right to have his membership reinstated upon payment in full of all indebtedness owing to MSRH.

7. Suspension and Termination of Membership

7.1 If Member (or any Family Members or guests of Member) shall:

7.1.1 Willfully refuse or neglect to comply with the provisions of the Rules & Regulations of MSRH;

7.1.2 Shall engage in any reckless or other conduct that endangers the safety of himself or herself, or any other person, or engages in other conduct that, in the sole judgment of MSRH, is prejudicial to the interests of MSRH or MSRH; or

7.1.3 Fail to reinstate his membership within 90 days of suspension for non-payment of indebtedness to MSRH,

MSRH shall have the right, in its sole and absolute discretion, to suspend or terminate the rights and privileges of membership of Member.

7.2 *Resignation.* Member may resign his, her or its membership in MSRH at any time by giving notice in writing to the Secretary, but shall continue to be liable for any indebtedness owing to MSRH at the date of Member's resignation.

7.3 *Effect of Termination or Resignation.* Member's resignation, or the termination or suspension of his, her or its rights or membership, will not relieve Member from any liability to MSRH or terminate Member's obligations under Section 5. If Member is terminated pursuant to this Section 7, Member's initiation fee shall be forfeited.

7.4 *Membership Cards.* All certificates, membership cards, and similar evidence of membership are the property of MSRH and shall be surrendered to MSRH upon demand.

8. Reservation of Rights

8.1 *Rules and Regulations.* MSRH shall have the unqualified right to make such rules and regulations for the use of all or any part of MSRH facilities as it deems appropriate or advisable. All such rules and regulations shall become effective immediately upon posting a copy thereof in a conspicuous place on MSRH premises and shall apply thereafter to all members, their Family Members and their guests.

8.2 *Interpretation.* The decision of MSRH shall be final on all questions involving the interpretation or construction of the Rules & Regulations of MSRH.

8.3 *Members Bound By Rules and Regulations; Changes.* Member agrees that Member is bound by the terms this Agreement and the Rules & Regulations of MSRH, and agrees to be bound by any and all changes, repeals, amendments or additions to such Rules & Regulations.

8.4 *Right to Amend Layout of the Property.* MSRH shall have the unqualified right to make such changes in the design, layout and composition of MSRH and its facilities as it deems appropriate.

8.5 *Termination of All Memberships.*

8.5.1 MSRH shall have the right, in its sole and absolute discretion, to terminate all memberships in MSRH upon not less than one year's written notice at any time after December 31, 2011.

8.5.2 MSRH shall also have the right, in its sole and absolute discretion, to terminate all memberships in MSRH upon the occurrence of an event rendering the facilities unusable or beyond repair.

8.5.3 Upon any termination pursuant to this Section 8.5, MSRH shall refund to members whose memberships have been in effect less than three years a pro rata portion of any initiation fees paid by them. The amount of the refund shall equal one-third of the initiation fee paid by Member for each year remaining before the third anniversary of the date on which membership became effective. No interest shall be payable on any such refund.

9. Miscellaneous

9.1 *Notices.* Whenever notice is required to be given to Member, it may be given either personally or by first-class mail, email, fax or other written communication, addressed to Member at the address of Member appearing on the books of MSRH or at the address given by Member to MSRH for the purpose of notice. If no current address appears on MSRH's books and no other has been given, notice shall be deemed to have been given if it is given to that Member in person or by telephone or fax, or posted in the principal office of the MotorSport Ranch Houston.

9.2 *Survival.* The provisions of Sections 2, 4 and 5 shall survive the termination of this Agreement.

9.3 *Force Majeure.* If during the term of this Agreement there should arise or occur any event or circumstance beyond the reasonable control of MSRH, including without limiting the generality of the foregoing, the action of government, flood, fire, strike, lock-out or other labor unrest, riot, civil unrest, terrorism, war (whether declared or undeclared), or an act of God, which prevents, restricts or delays MSRH from duly performing any of its obligations under this Agreement, then during the period that such event or circumstance, or the effect thereof, continues, performance by MSRH of such obligation will be suspended and excused to the extent that it is so prevented, restricted or delayed.

9.4 *Assignment.* A Member may not assign this Agreement or any of his, her or its rights hereunder. MSRH may assign its rights under this agreement at any time. This Agreement shall be binding upon and inure to the benefit of Member's permitted heirs, executors, legal representatives and assigns and the successors and assigns of the Company.

9.5 *No Waiver of Performance.* The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

9.6 *Severability.* The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

9.7 *Entire Agreement.* This Agreement represents the entire agreement of the parties and may be amended only by a writing signed by each of them.

9.8 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, other than the conflicts of law provisions thereof. Venue of any dispute shall be exclusively in Brazoria County, Texas.

9.9 *Headings.* The headings in this Agreement are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms of this Agreement.

This Agreement is dated and effective as of _____, 20__.

MOTORSPORT RANCH HOUSTON LLC

By: _____

Name:

Title:

Member

Signature

Name printed

Address

Telephone

E-mail

Member Class: _____

MSRH Houston Membership Terms
January 2008

Silver Membership

- Initiation Fee: \$ 7,000
- Monthly Dues \$ 150
- Daily Use Fee: \$ 30

Gold Membership

- Initiation Fee: \$15,000
- Monthly Dues: N/A first 2 years
- Daily Use Fee: N/A first 2 years

Platinum Membership

- Initiation Fee: \$35,000.00
- Monthly Dues N/A
- Daily Usage Fee: N/A

Karting Membership

- Initiation Fee: \$6,000.00
- Monthly Dues: \$ 50.00
- Daily Usage Fee: \$ 15.00

Joint Membership

- Initiation Fee: \$10,500.00
- Monthly Dues: \$ 200.00
- Daily Usage Fee Road Course \$ 30.00
- Daily Usage Fee Karting \$ 15.00

**All guests are allowed 2 visits per year. Guest passes may be purchased for \$250.00 each plus tax. All guests and spectators must sign the waiver upon arrival or they will be asked to leave the premises.

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

IN CONSIDERATION of my being permitted to compete, officiate, observe, work for, or participate in any way in the EVENTS at MOTORSPORT RANCH HOUSTON for and during the calendar year of _____ or being permitted to enter for any purpose and RESTRICTED AREA (defined as any area requiring special authorization, credentials or permission to enter or any area to which admission by the general public is restricted or prohibited), on behalf of myself, my personal representatives, heirs, and next of kin:

1. I acknowledge, agree and represent that I have or will immediately upon entering any of such RESTRICTED AREAS which I enter, and further agree and warrant that, if at any time, I am in or about RESTRICTED AREAS, and I feel anything to be unsafe, I will immediately advise the officials of such and if necessary will leave the RESTRICTED AREAS and/or refuse to participate further in the EVENTS.

2. I HEREBY RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE MotorSports Ranch Houston, LLC (MSRH), its parent, subsidiary or affiliated entities, its and their members or employees, the promoters, participants, racing associations, sanctioning organizations or any subdivision thereof, track operators, track owners, officials, car owners, drivers, pit crews, rescue personnel, any persons in any RESTRICTED AREA, promoters, sponsors, advertisers, owners and lessees 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 the premises or EVENT(S) and each of them, their directors, officers, agents and employees, all for the purposes herein referred to as "Releasees," FROM ALL LIABILITY TO ME, my 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 MY DEATH ARISING OUT OF OR RELATED TO THE EVENT(S), WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.

3. I HEREBY AGREE 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.

4. I HEREBY ASSUME 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.

5. I HEREBY acknowledge that THE ACTIVITIES OF THE EVENT(S) ARE VERY DANGEROUS and involve the risk of serious injury and/or death and/or property damage. I also expressly acknowledge that INJURIES RECEIVED MAY BE COMPOUNDED OR

INCREASED BY NEGLIGENT RESCUE OPERATIONS OR PROCEDURES OF THE RELEASEES.

6. I HEREBY agree 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 thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

7. To the maximum extent permitted by applicable law, I agree that in no event will MSRH or the other releasees be liable to me for any damages, claims or costs whatsoever or any consequential, indirect, incidental or special damages, or any lost profits or lost savings, under any legal theory of liability arising out of this waiver or the use of or inability to use the facilities, even if a MSRH representative has been advised of the possibility of such loss, damages, claims or costs or if such possibility was reasonably foreseeable. The foregoing limitations and exclusions apply to the extent permitted by applicable law. MSRH's aggregate liability under or in connection with this release shall be limited to the sum of \$1,000. MSRH is acting on behalf of all releasees for the purpose of disclaiming, excluding and limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose.

8. I HEREBY AGREE this Agreement shall be binding upon and enforceable against me, my personal representatives, spouse, assigns, heirs, and next of kin without limitation and shall be in full force and effect for all EVENTS during the calendar year _____.

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

ALL SECTIONS MUST BE COMPLETED

APPLICANT Legal Signature _____ Date _____ / _____ / _____
Mo. Day Yr.

Applicant Printed Name _____
S.S. # _____ / _____ / _____ Date of Birth _____ / _____ / _____ Affiliation _____

Subscribed and sworn to at _____ before me this _____ day of _____ A.D. 20____.

NOTARY PUBLIC

County,
State of _____
My Commission Expires _____