

Prepared by and when recorded return to:  
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The Law Offices of Swindell & Jones  
227 West Trade Street, Suite 2030  
Charlotte, North Carolina 28202

**STATE OF NORTH CAROLINA**

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**COUNTY OF ROWAN**

**THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT** (the "Agreement") is dated as of November \_\_\_\_, 2008 and is by and among **NC HIGH ROCK MORTGAGE LENDER, LLC**, a Florida limited liability company, having an address at 24 South River Street, Wilkes-Barre, Pennsylvania 18702, and its successors and assigns ("Lender"), **HIGH ROCK PROPERTIES, LLC**, a Delaware limited liability company, having an address at 9911 Rose Commons Drive, Suite E132, Huntersville, North Carolina 28232 ("Landlord"), and **BERKLEY GROUP, LLC**, a North Carolina limited liability company, having an office at 10612-D, Providence Road, PMB 742, Charlotte, North Carolina 28277 ("Tenant").

WHEREAS, Landlord has made, executed and delivered to Lender its Promissory Note which is secured by, among other things, that certain Mortgage or Deed of Trust and Security Agreement (which Mortgage or Deed of Trust and Security Agreement, and all amendments thereto, is hereinafter referred to as the "Mortgage") encumbering the real property in Book 1103, Page 476 of the Rowan County Public Registry and more particularly described on Exhibit A annexed hereto and made a part hereof (the "Property");

WHEREAS, by a lease agreement (the "Lease") dated March 17, 2008, between Landlord and Tenant, Landlord leased to Tenant a portion of the Property, as said portion of the Property is more particularly described in the Lease (that portion of the Property affected by the Lease may hereinafter be referred to as the "Premises");

WHEREAS, Tenant acknowledges that Lender will rely on this Agreement in connection with its Loan to Landlord; and

WHEREAS, Lender and Tenant desire to evidence their understanding with respect to the Mortgage and the Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. Tenant covenants, stipulates and agrees that the Lease and all of Tenant's right, title and interest in and to the Property thereunder is hereby, and shall at all times continue to be, subordinated and made secondary and inferior in each and every respect to the Mortgage and the lien thereof, to all of the terms, conditions and provisions thereof and to any and all advances made or to be made thereunder, so that at all times the Mortgage shall be and remain a lien on the Property prior to and superior to the Lease for all purposes, subject to the provisions set forth herein. Subordination is to have the same force and effect as if the Mortgage and such renewals, modifications, consolidations, replacements and extensions had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof. Notwithstanding anything to the contrary in this Agreement, the parties agree that in the event of any proposed sale by Lender, the right of first refusal granted to Tenant in Exhibit B of the Lease shall be observed.

2. Lender agrees that if Lender exercises any of its rights under the Mortgage, including entry or foreclosure of the Mortgage or exercise of a power of sale under the Mortgage, Lender will not disturb Tenant's right to use, occupy and possess the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period under any term, covenant or condition of the Lease.

3. If, at any time Lender (or any person, or such person's successors or assigns, who acquires the interest of Landlord under the Lease through foreclosure of the Mortgage or otherwise) shall succeed to the rights of Landlord under the Lease as a result of a default or event of default under the Mortgage, Tenant shall attorn to and recognize such person so succeeding to the rights of Landlord under the Lease (herein sometimes called "Successor Landlord") as Tenant's landlord under the Lease, said attornment to be effective and self-operative without the execution of any further instruments. Although said attornment shall be self-operative, Tenant agrees to execute and deliver to Lender or to any Successor Landlord, such other instrument or instruments as Lender or such other person shall from time to time request in order to confirm said attornment.

4. If Lender shall become the owner of the Property or the Property shall be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage or if the Property shall be transferred by deed in lieu of foreclosure, Lender or any Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) or bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior landlord (including Landlord); or

(b) obligated to cure any defaults of any prior landlord (including Landlord) which occurred, or to make any payment to Tenant which was required to be paid by any prior landlord (including Landlord), prior to the time that Lender or any Successor Landlord succeeded to the interest of such landlord under the Lease; or

(c) obligated to perform any construction obligations of any prior landlord (including Landlord) under the Lease or liable for any defects (latent, patent or otherwise) in the design, workmanship, materials, construction or otherwise with respect to improvements and buildings constructed on the Property; or

(d) subject to any offsets, defenses or counterclaims which Tenant may be entitled to assert against any prior landlord (including Landlord); or

(e) bound by any payment of rent or additional rent by Tenant to any prior landlord (including Landlord) for more than one month in advance; or

(f) bound by any amendment, modification, termination or surrender of the Lease made without the written consent of Lender; or

(g) liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to any prior landlord (including Landlord), whether or not still held by such prior landlord, unless and until Lender or any Successor Landlord has actually received said deposit for its own account as the landlord under the Lease as security for the performance of Tenant's obligation under the Lease (which deposit shall, nonetheless, be held subject to the provisions of the Lease).

5. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises is located (excluding the choice of law rules thereof).

6. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns (including, without limitation, any successor holder of the Promissory Note) and may be amended, supplemented, waived or modified only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

7. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Landlord, Tenant or Lender appearing above. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

8. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be

deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

9. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**[EXECUTION ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**TENANT:**

BERKLEY GROUP, LLC,  
a North Carolina limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

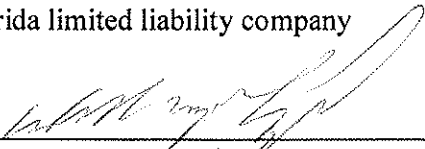
**LANDLORD:**

HIGH ROCK PROPERTIES, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

NC HIGH ROCK MORTGAGE LENDER, LLC  
a Florida limited liability company

By:  \_\_\_\_\_  
Name: William M. Berzinski  
Title: CFO

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_  
\_\_\_\_\_ [here insert names of principals].

Date: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[Official Stamp/Seal]

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_  
\_\_\_\_\_ [here insert names of principals].

Date: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[Official Stamp/Seal]

STATE OF Pennsylvania

COUNTY OF Luzerne

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_

William M. Lezinski [here insert names of principals].

Date: 11-21-08

Damita Jo Truchon  
Printed or Typed Name: Damita Jo Truchon  
Notary Public

My commission expires: 10-6-11

[Official Stamp/Seal]

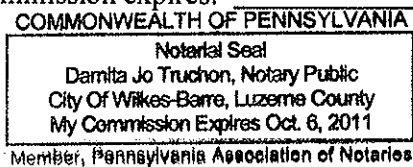


EXHIBIT A  
LEGAL DESCRIPTION

All that tract or parcel of land conveyed to Landlord by Trustee's Deed recorded in Book 969, Page 178 of the Rowan County Public Registry, lying and being in the Salisbury Township, Rowan County, North Carolina containing 201 acres, more or less, and more particularly described as follows:

BEGINNING at the N.C.G.S. Monument "Sign" having NAD 83 coordinates N: 718,945.20 and E: 1,586,373.38, said point being the POINT OF COMMENCEMENT; thence North 58 degrees 37 minutes 19 seconds West a distance of 1638.84 feet to a point marked by a ½ inch rebar on the northwest right of way line of U.S. Hwy. 29 which is the POINT OF BEGINNING; thence North 47 degrees 15 minutes 25 seconds West a distance of 261.27 feet to a point marked by a ½ inch rebar; thence South 36 degrees 28 minutes 07 seconds West a distance of 107.37 feet to a point marked by a ½ inch rebar; thence North 43 degrees 57 minutes 46 seconds West a distance of 45.28 feet to a point marked by a ½ inch rebar; thence South 46 degrees 54 minutes 30 seconds West a distance of 243.39 feet to a point marked by a 2-1/2 inch galvanized iron pipe (g.i.p.) on the east right of way line of Peace Street; thence along the east right of way line of Peace Street North 34 degrees 46 minutes 35 seconds West a distance of 171.48 feet to a point marked by a ½ inch rebar which is the intersection of the east right of way line of Peace Street and the north right of way line of Zeb Street; thence along the north right of way line of Zeb Street South 76 degrees 35 minutes 48 seconds West a distance of 150.30 feet to a point; thence North 11 degrees 44 minutes 20 seconds West a distance of 155.16 feet to a point marked by a 2-1/2 inch g.i.p.; thence North 76 degrees 40 minutes 45 seconds West a distance of 949.43 feet to a point marked by a ½ inch rebar; thence North 36 degrees 57 minutes 14 seconds East a distance of 799.67 feet to a point marked by a 2-1/2 inch g.i.p.; thence North 47 degrees 15 minutes 40 seconds East a distance of 712.77 feet to a point marked by a 2-1/2 inch g.i.p.; thence North 30 degrees 44 minutes 12 seconds East a distance of 246.07 feet to a point marked by a ½ inch rod; thence North 60 degrees 48 minutes 30 seconds East a distance of 353.02 feet to a point marked by a 2-1/2 inch g.i.p.; thence North 77 degrees 37 minutes 07 seconds East a distance of 242.82 feet to a point marked by a railroad iron; thence North 01 degrees 20 minutes 39 seconds East a distance of 105.47 feet to a point marked by a ½ inch rebar set; thence North 86 degrees 12 minutes 15 seconds East a distance of 245.87 feet to a point marked by a ½ inch rebar; thence North 81 degrees 50 minutes 38 seconds East a distance of 97.98 feet to a point marked by a 2-1/2 inch g.i.p.; thence South 74 degrees 54 minutes 29 seconds East a distance of 198.88 feet to a point marked by a ½ inch rebar; thence South 54 degrees 47 minutes 33 seconds East a distance of 495.59 feet to a point marked by a 1-1/2 inch pipe; thence South 14 degrees 23 minutes 18 seconds East a distance of 326.22 feet to a point marked by a 2-1/2 inch g.i.p.; thence South 06 degrees 01 minutes 09 seconds East a distance of 337.21 feet to a point marked by a PK nail in the north bound lane of U.S. Hwy. 29; thence South 16 degrees 04 minutes 51 seconds West a distance of 262.71 feet to a point marked by a ½ inch rebar set; thence South 50 degrees 19 minutes 37 seconds West a distance of 115.31 feet to a point and marked by a 4 ½ rebar; thence South 44 degrees 54 minutes 09 seconds East a distance of 278.29 feet to a point marked by a ½ inch rebar set; thence South 13 degrees 36 minutes 09 seconds East a distance of 247.00 feet to a point marked by a ½ inch rebar set; thence South 00 degrees 16 minutes 51 seconds West a distance of 443.00 feet to a point marked by a ½ inch rebar set; thence along the meandering contour line



elevation 655 a distance of 2000 feet, more or less, to a point on the west right of way line of Interstate 85, said point being South 44 degrees 08 minutes 56 seconds East a distance of 314.30 feet from the previously described point; thence along a curve to the left in the west right of way line of Interstate 85, a chord bearing of South 25 degrees 24 minutes 09 seconds West a chord distance of 162.40 feet, an arc distance of 162.42 feet, and a radius of 3167.5 feet to a point; thence along a curve to the left in the west right of way line of Interstate 85 a chord bearing of South 20 degrees 31 minutes 09 seconds West, a chord distance of 377.30 feet, an arc distance of 377.52 feet and a radius of 3167.50 to a point; thence along the west right of way line of Interstate 85 South 16 degrees 43 minutes 27 seconds West, through a 2-12 inch g.i.p. at a distance of 1186.71 feet, a total distance of 2617.86 to a point marked by a ½ inch rebar set on the west right of way line of Interstate 85 said point also being North 29 degrees 14 minutes 17 seconds West a distance of 54.30 feet from a 2 inch pipe within the right of way of Interstate 85; thence North 29 degrees 14 minutes 17 seconds West a distance of 526.83 feet to a point marked by a 2-1/2 inch g.i.p.; thence North 59 degrees 12 minutes 52 seconds West through a point marked by a ½ inch rebar set on the east right of way line of the Southern Railroad right of way at a distance of 1936.26 feet, a total distance of 1993.13 feet to a point marked by a stone; thence North 32 degrees 09 minutes 28 seconds East a distance of 2182.57 feet to a point; thence North 45 degrees 10 minutes 35 seconds East a distance of 463.00 feet to a point; thence North 52 degrees 10 minutes 25 seconds West a distance of 15.50 feet to a point; thence North 42 degrees 42 minutes 35 seconds East a distance of 100.36 feet to a point marked by ½ inch rebar found which is the POINT OF BEGINNING.

LESS AND EXCEPT the parcel of land containing 0.29 acre, more or less, belonging to Yadkin United Methodist Church which is more particularly described as follows:

BEGINNING at the N.C.G.S. Monument "Sign" having NAD 83 coordinates N: 718,945.20 and E: 1,586,373.38, said point being the POINT OF COMMENCEMENT; thence North 58 degrees 37 minutes 19 seconds West a distance of 1638.84 feet to a point marked by a ½ inch rebar on the northwest right of way line of U.S. Hwy. 29; thence North 18 degrees 25 minutes 02 seconds East a distance of 534.79 feet to a point marked by a 2-1/2 inch g.i.p. said point being the POINT OF BEGINNING for this parcel; thence North 79 degrees 00 minutes 52 seconds West a distance of 170.01 feet to a point marked by a 2-1/2 inch g.i.p.; thence North 10 degrees 39 minutes 51 seconds East a distance of 75.00 feet to a point; thence South 79 degrees 00 minutes 52 seconds East a distance of 170.01 feet to a point; thence South 10 degrees 39 minutes 51 seconds West a distance of 75.00 feet to a point, said point being the POINT OF BEGINNING.

ALSO, LESS AND EXCEPT the parcel of land containing 1.79 acres, more or less, belonging to Southern Railroad which is more particularly described as follows:

BEGINNING at the N.C.G.S. Monument "Sign" having NAD 83 coordinates N: 718,945.20 and E: 1,586,373.38, said point being the POINT OF COMMENCEMENT; thence North 58 degrees 37 minutes 19 seconds West a distance of 1638.84 feet to a point marked by a ½ inch rebar on the northwest right of way line of U.S. Hwy 29; thence North 65 degrees 43 minutes 43 seconds East a distance of 1093.03 feet to a point marked by a ½ inch rebar set on the southeast right of way line of Southern Railroad, said point being the POINT OF BEGINNING; thence along a chord of a curve in the southeast right of way of Southern Railroad South 50 degrees 19 minutes 37 seconds West, passing through a ½

inch rebar set at 115.31 feet, a total distance of 1433.61 feet to a point on the southeast right of way line of Southern Railroad; thence along a curve to the right in the southeast right of way line of Southern Railroad an arc distance of 1445.91 feet to a point marked by a ½ inch rebar set, said curve having a chord bearing of North 50 degrees 19 minutes 37 seconds East, a chord distance of 1433.61 feet, and a radius of 3194.98 feet, said point being the POINT OF BEGINNING.

ALSO LESS AND EXCEPT the parcel of land containing 2.807 acres, more or less, belonging to Aurora Motorsports and being more particularly described as follows:

BEGINNING at a ½ inch rebar found on the northwest side of U.S. Highway 29, said point being North 58 degrees 37 minutes 20 seconds West a distance of 1638.95 feet from NC Grid Monument "Sign"; thence North 47 degrees 15 minutes 25 seconds West a distance of 261.27 feet to a point marked by a ½ inch rebar on the east right of way line of Hunter Street; thence along a curve to the left in the east right of way line of Hunter Street, an arc length of 54.25 feet to a point, said curve having a radius of 242.10 feet, a chord bearing of North 16 degrees 37 minutes 59 seconds East and a chord distance of 54.14 feet; thence continuing along the east right of way line of Hunter Street North 10 degrees 12 minutes 49 seconds East a distance of 131.70 feet to a point; thence continuing along a curve to the left in the east right of way line of Hunter Street an arc distance of 135.94 feet, said curve having a radius of 305.52 feet, a chord bearing of North 02 degrees 34 minutes 31 seconds West and a chord distance of 134.82 feet; thence continuing along the east right of way line of Hunter Street North 15 degrees 21 minutes 51 seconds West a distance of 29.49 feet to a point which marks the intersection of the east right of way line of Hunter Street and the south right of way line of Piedmont Avenue; thence along the south right of way line of Piedmont Avenue South 79 degrees 01 minutes 08 seconds East a distance of 332.74 feet to a point marked by a 2 inch pipe which is also the intersection of the south right of way line of Piedmont Avenue and the west right of way line of NC Finishing Lane; thence along the west right of way line NC Finishing Lane South 10 degrees 41 minutes 24 seconds West a distance of 363.34 feet to a point on the north side of US Hwy. 29; thence along the north side of US Hwy. 29 South 42 degrees 18 minutes 40 seconds West a distance of 137.21 feet to a point marked by a ½ inch rebar, said point being the POINT OF BEGINNING.