


STATE OF ALABAMA       )  
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JEFFERSON COUNTY       )

  
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Shelby Cnty Judge of Probate, AL  
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**AGREEMENT NOT TO CONVEY OR ENCUMBER  
AND AGREEMENT TO MORTGAGE**

**THIS AGREEMENT NOT TO CONVEY OR ENCUMBER AND AGREEMENT TO MORTGAGE** ("this Agreement") dated December 1, 2010 is entered into by **UPTON PROPERTIES, LLP**, an Alabama limited liability partnership (the "Grantor"), for the benefit of **IBERIABANK**, a Louisiana state bank (the "Bank").

**Recitals**

A. The Grantor has requested that the Bank extend credit (the "Loan") to CraneWorks, Inc., an Alabama corporation, RentalWorks Real Estate, L.L.C., an Alabama limited liability company, and CraneWorks Real Estate, LLC, an Alabama limited liability company (collectively, the "Borrower").

B. The Loan is to be made to the Borrower on the terms and conditions set forth that certain Credit Agreement dated December 1, 2010 between the Borrower and the Lender (the "Credit Agreement"). Capitalized terms that are not otherwise defined herein have the meanings defined for them in the Credit Agreement.

C. In order to induce the Bank to make the Loan to the Borrower and to secure the Obligations of the Borrower under the Credit Agreement, the Grantor has agreed to execute and deliver to the Bank this Agreement in connection with the real estate situated in Jefferson County, Alabama described in Exhibit A hereto (the "Property").

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals, and in further consideration of all advances heretofore or hereafter made by the Bank to, or on behalf of, the Borrower, the Grantor covenants and agrees with the Bank as follows:

1. **No Lien**. From the date hereof until the full and complete performance and satisfaction of all of the obligations set forth in the Credit Agreement, and payment of all sums now or hereafter due and payable under the Credit Agreement, this Agreement or any other document now or hereafter evidencing, securing or executed in connection with the Loan (collectively, the "Credit Documents"), and the termination of this Agreement by the Bank in writing, unless the Bank shall otherwise consent in writing, the Grantor will not, whether directly or indirectly or voluntarily or involuntarily:

(a) Incur, create, assume or suffer to exist any mortgage, deed of trust, security deed, security agreement, financing statement, pledge, security interest, lien, or charge whatsoever



(hereinafter collectively sometimes called "Liens") with respect to any of the Property, or any legal, beneficial or equitable interest therein, other than the Permitted Encumbrances described in Exhibit B.

(b) (i) Lease for any period longer than twelve months, or sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise, (ii) permit to be the subject of any transaction described in clause (i) above, (iii) enter into an agreement for any transaction described in clause (i) above with respect to, or (iv) grant an option which or take any action which pursuant to the terms of any agreement to which the Grantor is a party may result in any transaction described in clause (i) above with respect to, any of the Property, or any legal, beneficial or equitable interest therein (the foregoing, collectively or severally, called "Transfer").

For purposes of this Agreement, but without limiting the foregoing, a Transfer of all or substantially all of the assets of the Grantor shall be deemed a Transfer of the Property. Any person or legal representative of the Grantor to whom the Grantor's interest in the Property or any Lien thereon passes, by operation of law or otherwise, shall be bound by the provisions of this Agreement. The provisions of this Agreement shall apply to each and every such Lien or Transfer for all or any portion of the Property or any legal or equitable interest therein, regardless of whether or not the Bank has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Lien or Transfer of all or any portion of the Property or any legal, equitable or beneficial interest therein.

2. **Agreement to Mortgage.** Within thirty days upon receiving written notice from the Bank, the Grantor agrees to execute and deliver to the Bank such mortgages, security agreements and assignment of rents and leases (the "Mortgages"), in form and content satisfactory to the Bank and its counsel, granting a security interest in the Property and all related equipment, furniture and fixtures located thereon and owned by the Grantor. At any time following (i) the occurrence and during the continuance of a default under the Credit Agreement or (ii) the Loan becoming due and payable in full (whether upon demand, by acceleration, at stated maturity or otherwise), the Bank shall have the right to file and record the Mortgages so requested and shall further be furnished with a mortgagee's title insurance policy insuring its interest under the Mortgages in the Property in the amount of the Loan, which policy (i) shall be issued by an insurer acceptable to the Bank, (ii) shall be issued in the current ALTA standard form, (iii) shall reflect only such easements, encumbrances, restrictions and exceptions (other than liens securing property taxes not yet due and payable) as shall be approved by the Bank, and (iv) shall have an effective date subsequent to the recording of the Mortgages in favor of the Bank. The Grantor shall also (i) execute and deliver to the Bank such financing statements related to the Mortgages as shall be necessary to perfect the Bank's security interest thereunder; (ii) furnish UCC searches sufficient to establish the Bank's security interest under the Mortgages as first priority; and (iii) furnish the Bank with such opinions of counsel and other information as shall be sufficient to satisfy the Bank and its counsel as to the validity, legality, effectiveness, perfection, priority and enforceability of the Mortgages. All taxes, revenue stamps, filing and recording fees and charges, title insurance premiums, title examination fees, and other costs and expenses related to the execution, delivery, filing, and perfection of the Mortgages and the issuance of said title insurance policy shall be paid by the Grantor.

3. **Severability.** If all or any portion of this Agreement shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein.





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4. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed given by personal delivery to the party to whom such notice is directed, or upon deposit thereof in the United States mail, registered or certified, return receipt requested, first class postage prepaid and if to Grantor, addressed as follows: to c/o CraneWorks, Inc., 2728 8<sup>th</sup> Avenue North, Birmingham, AL 35203 and if to Bank, addressed as follows: to IBERIABANK, 2340 Woodcrest Place, Birmingham, Alabama 35209, Attn: Hunter G. Hill, Senior Vice President.

5. **Waiver of Jury Trial.** This Agreement incorporates by reference the requirements for waiver of jury trial set forth in the Credit Agreement.

6. **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the state in which the Property is located without regard to principles of conflicts of laws, except that the internal laws of the State of Alabama (without regard to principles of conflicts of laws) shall govern (i) those terms and conditions contained in Credit Documents which are incorporated by reference herein, and (ii) the resolution of issues arising under the Credit Documents to the extent that such resolution is necessary to the interpretation of this Agreement.

7. **Provisions as to Covenants and Agreements.** All of the Grantor's covenants and agreements under this Agreement shall run with the land and time is of the essence with respect thereto.


8. **Matters to be in Writing.** This Agreement cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

9. **Successors and Assigns.** The provisions hereof shall be binding upon the Grantor and the heirs, devisees, representatives, successors and permitted assigns of the Grantor, including the successors in interest of the Grantor in and to all or any part of the Property, and shall inure to the benefit of the Bank and its successors, legal representatives, substitutes and assigns.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Agreement on the day first set forth above.

**UPTON PROPERTIES, LLP**

By:   
Name: STEVE UPTON  
Title: Mgr. Gen. Partner

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that Stephen D. Upton whose name as general partner of Upton Properties, LLP, an Alabama limited liability partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such general partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this the 17 day of December, 2010.

  
Notary Public

[AFFIX SEAL]

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

**MY COMMISSION EXPIRES 9/29/2013**

This instrument was prepared by:  
C. Patrick Bodden, Esq.  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 Regions Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000



**EXHIBIT A**

**Property Description**

**Lot 1, according to the USW Subdivision, as recorded in Map Book 14, Page 80, in the Office of the Judge of Probate of Shelby County, Alabama.**


and

**Lot 2-B, according to the Map of Windham Tire Resurvey, as recorded in Map Book 18, Page 94, in the Probate Office of Shelby County, Alabama.**

**TOGETHER WITH a perpetual easement for the use of that certain detention pond and oil separator and grit chamber (the "Facilities") in, under and over the area specifically shown on the Windham Tire Resurvey (the "Resurvey") as recorded in Map Book 18, Page 94, in the Probate Office, said perpetual easement being more particularly described as follows: it being understood and agreed that the Facilities shall serve Lots 2-B and 3-B according to the Resurvey, such easement rights shall include a right of vehicular and pedestrian ingress and egress to and from the easement area as necessary and appropriate for the use of the Facilities. Said Facilities being a part of Lot 3B, Windham Tire Resurvey, as recorded in Map Book 18, Page 94, in the Probate Office of Shelby County, Alabama, being an easement for a detention pond, oil separator, and grit chamber, said easement being more particularly described as follows:**

**Commence at the Northwestern corner of Lot 2B, Windham Tire Resurvey, as recorded in Map Book 18, Page 94, in the Office of the Judge of Probate of Shelby County, Alabama and run North 88 degrees 38 minutes 27 seconds East along the property line of same for 230.00 feet to the most Northeasterly point of said Lot 2B, said point being also the point of beginning; thence run South 30 degrees 52 minutes 21 seconds East 106.00 feet along the common line of said Lots 2B and 3B to a point; thence run North 88 degrees 49 minutes 26 seconds East for 97.28 feet to a point on the Easterly line of said Lot 3B; thence run North 33 degrees 14 minutes 21 seconds West for 80.20 feet; thence run North 07 degrees 51 minutes 56 seconds West for 13.24 feet; thence North 67 degrees 15 minutes 15 seconds East for 10.39 feet; thence North 60 degrees 41 minutes 15 seconds West for 10.75 feet; thence South 85 degrees 55 minutes 08 seconds West for 10.92 feet; thence North 70 degrees 59 minutes 58 seconds West for 12.11 feet; thence South 88 degrees 38 minutes 27 seconds West for 79.67 feet to the point of beginning.**

**TOGETHER with a 30-foot non-exclusive, perpetual easement for vehicular and pedestrian ingress and egress in, under, over and across the area specifically shown on the Resurvey and lying on the most Westerly boundary of Lots 2-B and 3-B according to the Resurvey, it being understood that such 30-foot easement area shall serve Lots 2-B and 3-B according to the Resurvey and Lot 1 USW Subdivision as recorded in Map Book 14, Page 8, in said Probate Office.**

  
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**EXHIBIT B**

**Permitted Encumbrances**

None