

20051123000611630 1/12 \$58.00
Shelby Cnty Judge of Probate, AL
11/23/2005 03:04:14PM FILED/CERT

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Liz Corrigan @ 205-458-5259
B. SEND ACKNOWLEDGMENT TO: (Name and Address) Liz Corrigan Burr & Forman LLP 3100 SouthTrust Tower Birmingham, Alabama 35203

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Jenkins Brick Company				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 201 North 6th Street		CITY Montgomery	STATE AL	POSTAL CODE 36104
				COUNTRY USA
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION corporation	1f. JURISDICTION OF ORGANIZATION Alabama	1g. ORGANIZATIONAL ID #, if any ☒ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME SMBC, Inc.				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS 201 North 6th Street		CITY Montgomery	STATE AL	POSTAL CODE 36104
				COUNTRY USA
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION corporation	2f. JURISDICTION OF ORGANIZATION Alabama	2g. ORGANIZATIONAL ID #, if any ☒ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Wachovia Bank, National Association, as Agent				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS P.O. Box 2554		CITY Birmingham	STATE AL	POSTAL CODE 35290
				COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

See Schedule A attached hereto for description of Collateral.

This financing statement is being filed in connection with a Mortgage and Security Agreement being filed simultaneously herewith, on which the appropriate mortgage tax has been paid.

This financing statement should be cross-indexed in the real estate records.

5. ALTERNATIVE DESIGNATION [if applicable]:	☐ LESSEE/LESSOR	☐ CONSIGNEE/CONSIGNOR	☐ BAILEE/BAILOR	☐ SELLER/BUYER	☐ AG. LIEN	☐ NON-UCC FILING
6. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [optional]		☐ All Debtors ☐ Debtor 1 ☐ Debtor 2			
8. OPTIONAL FILER REFERENCE DATA						

Shelby County, Alabama



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UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
Jenkins Brick Company		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

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11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
Jordan Brick Company, Inc.				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
201 North 6th Street		Montgomery	AL	36104
11d. SEE INSTRUCTIONS		11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	
ADD'L INFO RE ORGANIZATION DEBTOR		corporation	Alabama	
			11g. ORGANIZATIONAL ID #, if any	
			☒ NONE	

12. ☐ ADDITIONAL SECURED PARTY'S ☐ or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

- ☐ Debtor is a TRANSMITTING UTILITY
☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years
☐ Filed in connection with a Public-Finance Transaction — effective 30 years

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OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

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11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME	Jenkins Development Company, L.L.C.			
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS	CITY		STATE	POSTAL CODE
201 North 6th Street	Montgomery		AL	36104
11d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
		limited liability co.	Alabama	☒ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS	CITY		STATE	POSTAL CODE

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11a. ORGANIZATION'S NAME					
OR C & M Development, L.L.C.					
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
201 North 6th Street		Montgomery	AL	36104	USA
11d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any	
		limited liability co.	Alabama	☒ NONE	

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME					
OR					
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
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11a. ORGANIZATION'S NAME	Madison Boulevard, LLC			
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
201 North 6th Street	Montgomery	AL	36104	USA
11d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
		limited liability co.	Alabama	☒ NONE

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12a. ORGANIZATION'S NAME				
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13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

16. Additional collateral description:

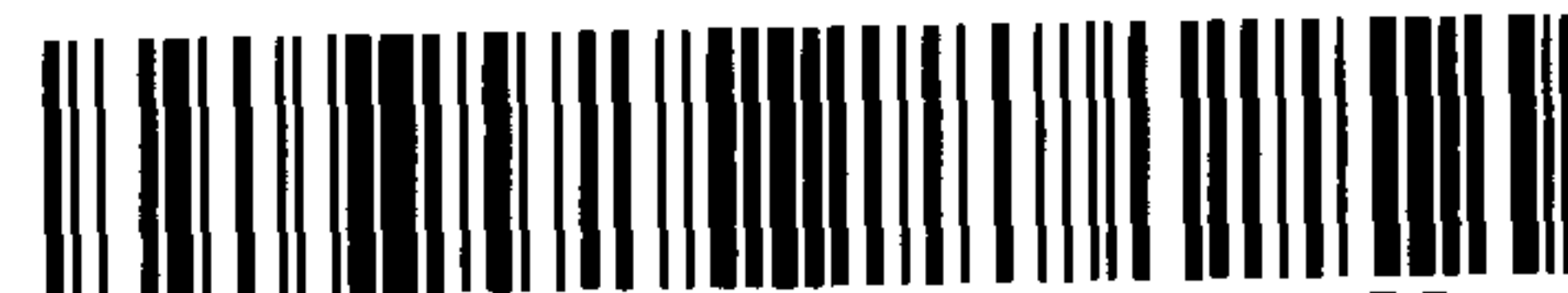
15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

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9b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX	

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11d SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	11e TYPE OF ORGANIZATION	11f JURISDICTION OF ORGANIZATION	11g ORGANIZATIONAL ID #, if any
				☐ NONE

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13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

See Exhibit A attached hereto for description of real estate.

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

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- ☐ Debtor is a TRANSMITTING UTILITY
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SCHEDULE "A" TO UCC FINANCING STATEMENT
(DESCRIPTION OF COLLATERAL)

"Collateral" means all of the assets of Borrowers of every kind, nature and description, wherever located, whether now owned or hereafter acquired (other than the Excluded Collateral and interests in any Lender Party Swap Documents), and including the following: (A) the Mortgaged Property; (B) the Construction Documents and the other Mortgaged Property Documents; (C) all amounts that may be owing from time to time by any Lender Party to any Borrower in any capacity, including, without limitation, any balance or share belonging to any Borrower, of any Deposit Accounts or other account with any Lender Party; and (D) all of Borrowers' assets which are or may be subject to Article 9 of the Uniform Commercial Code, together with all replacements therefor, additions and accessions thereto, and proceeds (including, but without limitation, insurance proceeds) and products thereof, including, without limitation, the following: Accounts; Chattel Paper; Commercial Tort Claims; Deposit Accounts and Lockbox Accounts; Documents; Equipment; General Intangibles; Goods; Instruments; Inventory; Investment Property; Letter-of-Credit Rights; Payment Intangibles; Software; Supporting Obligations; all existing and future leases and use agreements of personal property entered into by any Borrower as lessor with other Persons as lessees, including without limitation the right to receive and collect all rentals and other monies, including security deposits, at any time payable under such leases and agreements; any existing and future leases and use agreements of personal property entered into by any Borrower as lessee with other Persons as lessors, including without limitation the leasehold interest of any Borrower in such property, and all options to purchase such property or to extend any such lease or agreement; all Fixtures of Borrowers (including, but not limited to, any Fixtures located on the Mortgaged Property); (E) all Records pertaining to any of the Collateral; (F) any and all other assets of Borrowers of any kind, nature, or description and which are intended to serve as collateral for the Loans under any one or more of the Security Documents; and (G) all interest, dividends, Proceeds, Accessions, products, rents, royalties, issues and profits of any of the property described above, including, without limitation, all monies due and to become due with respect to such property, together with all rights to receive the same.

As used in this Schedule "A", "Borrowers" shall mean the Debtors, collectively; "Borrower" shall mean any one of the Debtors, singularly; and "Agent" shall mean Wachovia Bank, National Association, as Agent under that certain Credit Agreement dated as of November 1, 2005 among Borrowers, Agent and the lenders (the "Lenders") a party thereto (as amended from time to time, the "Credit Agreement"), and all other capitalized words and phrases shall, except as otherwise defined below, have the meaning as set forth in the Credit Agreement. In the case of any conflict between the meanings set forth below and the meanings set forth in the Credit Agreement, the broader meaning shall apply.

As used herein, unless the context clearly requires to the contrary, terms not specifically defined herein shall have the same respective meanings as are given to those terms in the Uniform Commercial Code as presently adopted and in effect in the State of Alabama (except in cases and with respect to Collateral when the perfection, the effect of perfection or nonperfection, and the priority of a Lien in the Collateral is governed by another Jurisdiction, in

which case such capitalized words and phrases shall have the meanings attributed to those terms under such other Jurisdiction), and as used herein:

"Assigned Leases" means all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the Mortgaged Property, and each modification, extension, renewal and guarantee thereof, including the Rents.

"Bond Issue Lease" means any lease to which any Borrower Party is a party, pursuant to which any Borrower Party acquires any leasehold estate in connection with the 1999 Bonds or the 2005 Bonds, as the same may be amended from time to time.

"Borrower Parties" means Borrowers and any other Person that hereafter becomes a party to the Credit Agreement, any other Loan Document or any Lender Party Swap Document, and which Person is responsible in whole or in part for any of the Obligations.

"Brasfield Contract" means that certain Standard Form of Agreement Between Owner and Contractor dated May 27, 2005 between Jenkins Brick Company, Inc. and Brasfield & Gorrie, and includes any and all renewals, extensions or modifications thereof and guaranties of performance to Borrower thereunder.

"Construction Contract" means that certain Conditions of Sale dated June 9, 2005 between Jenkins Brick Company, Inc. and Hans Lingl Anlagenbau und Verfahrenstechnik GmbH & Co. KG, and includes any and all renewals, extensions or modifications thereof and guaranties of performance to any Borrower thereunder.

"Construction Documents" means the Construction Contract, the Brasfield Contract, and any and all other agreements entered into by Borrower with any contractor, architect, engineer or other Person with respect to the construction of the Project.

"Excluded Collateral" (i) assets of Borrower to the extent the assignment thereof is restricted by a contract or applicable Law and would not otherwise be permitted by Section 9-408 of the UCC, (ii) Borrower's Real Property, Fixtures and any other improvements located in the State of Florida (provided that after the occurrence of a Default and upon demand of Agent, such Real Property shall become subject to a Nonencumbrance Agreement as provided in this Agreement), and (iii) until such time as Borrowers shall have executed and delivered the Patent and Trademark Security Agreement as provided for in Section 12.18 of this Agreement, Borrowers' patents, trademarks, trade names, service marks and copyrights, and all applications therefor and licenses thereof.

"Issuing Lender" means Wachovia Bank, National Association and any other Person that becomes the Issuing Lender with respect to a Letter of Credit pursuant to the terms of the Credit Agreement.

"Landfill Gas Pipeline" means the landfill gas pipeline to be constructed to transport landfill gas to the Project.

"Landfill Gas Pipeline Documents" means any and all documents to which any Borrower is a party and relating to the construction and use of the Landfill Gas Pipeline.

"Lender Parties" means Agent, Lenders, Issuing Lender and any Lender Party (or an Affiliate of a Lender Party) that is now or hereafter becomes a party to any Lender Party Swap Document.

"Lender Party Swap Documents" means any Swap Documents entered into between any Borrower Party and any Lender Party and relating to the Loans.

"Mortgaged Property" means the "Mortgaged Property" as defined on the attached Schedule A-1.

"Mortgaged Property Documents" means (i) the Assigned Leases; (ii) the Construction Documents; (iii) the Landfill Gas Pipeline Documents; (iv) any and all other agreements entered into by any Borrower with any Person relating to the Mortgaged Property; (v) any and all Governmental Approvals with respect to the Mortgaged Property; and (vi) any and all operating, service, supply, and maintenance contracts with respect to the Mortgaged Property.

"Project" means a brick manufacturing facility with an annual production capacity of approximately 130,000,000 bricks, to be constructed on the Land located in St. Clair County, Alabama.

"Rents" means all the rents, issues, and profits now due and which may hereafter become due under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Bankruptcy Law, including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under Bankruptcy Law in respect of a tenant and all rentals and charges outstanding under the Assigned Leases as of the date of entry of such order for relief.

"Swap Documents" (A) any agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (B) any combination of the foregoing; or (C) any master agreement for any of the foregoing, as any of the foregoing may be amended or supplemented from time to time.

"1999 Bonds" means those certain \$6,000,000 Taxable Revenue Bonds, Series 1999-A (Jenkins Brick Company Project), issued by The Industrial Development Board of the City of Montgomery pursuant to the 1999 Bond Issue Documents.

"2005 Bonds" means those certain Incremental Taxable Variable Rate Demand Bonds (Jordan Brick Company, Inc. Project), Series 2005 in the maximum principal amount of \$46,000,000.00, to be issued by Jordan Brick pursuant to the 2005 Bond Issue Documents.

SCHEDULE A-1

All of Borrowers' right, title and interest of whatever kind, nature or description, now existing or hereafter acquired, in and to all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, whether now owned or hereafter acquired, and including replacements and additions thereto (herein referred to collectively as the "Mortgaged Property"):

(a) All those certain tracts, pieces or parcels of land, and interests in land, located in Chilton County, Alabama; Elmore County, Alabama; Etowah County, Alabama; Houston County, Alabama; Madison County, Alabama; Marshall County, Alabama; Montgomery County, Alabama; Shelby County, Alabama; St. Clair County, Alabama; Chatham County, Georgia; Lee County, Georgia; Escambia County, Florida; Leon County, Florida; and Beaufort County, South Carolina, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land") (provided, however, that with respect to any UCC-1 financing statement other than a UCC-1 financing statement filed in a central filing office, there is attached only the legal description of the Land located in the county where such financing statement is being filed);

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by any Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (collectively the "Improvements");

(c) All easements, rights of way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by any Borrower;

(d) All rents, issues, profits, revenues and proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all of the estate, right,

title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of any Borrower of, in and to the same;

(e) All leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the Mortgaged Property, and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Bankruptcy Law, including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Law in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief; and

(f) Any Borrower's leasehold estate and other interest(s), if any, under any Bond Issue Lease, of whatever kind, nature or description, and all rights, title and interest pertaining thereto.

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EXHIBIT A
DESCRIPTION OF LAND AND PERMITTED EXCEPTIONS

Birmingham Distribution Facility - 2229 Pelham Parkway, Pelham, Shelby County, AL

A parcel of land located in the Southwest 1/4 of Section 31, Township 19 South, Range 2 West and the Northwest 1/4 of Section 6, Township 20 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of the Southwest 1/4 of Section 31; thence run North along the 1/4 line 506.79 feet; thence left 121°25'36", 1325.96 feet to the point of beginning; thence continue along the same course Southwesterly 87.36 feet; thence right 39°39'13", 251.74 feet to the Easterly right of way of U.S. Highway 31; thence right 90°00', 415.25 feet Northerly along said ROW; thence right 90°00', 319.00 feet; thence right 90°00', 359.51 feet to the point of beginning.

Less and except any part of subject property lying within a road right of way.