

## AUCTION PURCHASE AND SALE AGREEMENT

**THIS AUCTION PURCHASE AND SALE AGREEMENT** (this “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between **SPIRIT MASTER FUNDING III, LLC**, a Delaware limited liability company (“Seller”), and \_\_\_\_\_, a \_\_\_\_\_ (“Purchaser”).

WHEREAS, Seller has entered into an agreement with Auction Management Corporation, 1827 Powers Ferry Road, Building 5, Atlanta, GA 30339 (“Auction Company”) to advertise, market and conduct an auction of the real property (defined below); and

WHEREAS, Auction Company has conducted an auction which was held on \_\_\_\_\_, 20\_\_ (“Auction Date”) for that certain real property whose address is 37 Center Street, Hornell, New York; and

WHEREAS, Purchaser was the winning bidder at the Auction.

NOW THEREFOR, for and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

### ARTICLE I

#### PURCHASE OF PROPERTY

**Section 1.01. Agreement to Purchase.** Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement and the auction documents (the “Transaction”), all of Seller’s right, title and interest in and to (a) the real property as more particularly described on Exhibit A attached hereto, and any and all improvements thereon and appurtenances thereto (collectively, the “Real Property”); (b) the fixtures affixed thereto; (c) all other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (c) above, and (d) all of Seller’s right, title and interest in all appliances, equipment, fixtures, machinery, furniture, carpet, drapes and other personal property, if any, owned by Seller and located on the Real Property as of the Closing Date (the “Tangible Personal Property”) now or here after existing, collectively, the “Property”).

**Section 1.02. Purchase Price.** The purchase price (“Purchase Price”) for the Property shall be the total of the bid on the Auction Date in the amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) (the “Bid Amount”) plus a premium of ten percent (10%) of the bid (the “Purchaser’s Premium”) for a total Purchase Price equal to \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) and shall be paid by Purchaser to Seller at the Closing (as defined in Section 3 below). The Purchase Price shall be paid by Purchaser by wire transfer in immediately available federal funds at Closing.

**Section 1.03. Deposit.** Purchaser as a precondition to bidding has wired a non-refundable Initial Bid Deposit to Auction Company’s escrow account in the amount of \$2,500. Within 24 hours of completion of the Auction, Purchaser shall wire to Title Company an Additional Deposit

in the amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_), in an amount sufficient to raise the Deposit to ten percent (10%) of the Purchase Price. No later than two days following the Auction Date, Auction Company shall wire the Initial Bid Deposit to Title Company (as hereinafter defined). The Initial Bid Deposit plus the Additional Deposit wired by Purchaser shall comprise the total amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_), (together with all interest accrued, if any, the “Deposit”) which shall be held by the Title Company and shall be applied against the Purchase Price at Closing or disbursed as provided herein. At Purchaser’s direction and expense (if any), the Title Company shall place the Deposit in an interest-bearing account. Seller shall have the option of declaring a default and terminating this Agreement if the Deposit is not delivered to Escrow Agent within the timeframes provided in this Agreement. The Deposit shall be non-refundable for any reason, except Seller default.

## ARTICLE II

### DUE DILIGENCE

#### Section 2.01. Title Commitment, Survey and Phase I.

(a) Prior to the execution of this Agreement, Seller has delivered or made available to Purchaser for Purchaser’s review, among other items, (i) a commitment for title insurance (the “Title Commitment”) for an Owner’s Policy of Title Insurance (“Title Policy”) issued by First American Title Insurance Company (the “Title Company”); (ii) the most current survey of the Property in Seller’s possession (the “Survey”); and (iii) the most current Phase I environmental site assessment of the Property, if any, in Seller’s possession (“Phase I”). Purchaser shall be required to accept title insurance from Title Company and Title Company’s agent, and by execution of this Agreement, Purchaser agrees that said title agent shall close the transaction contemplated by this Agreement. Purchaser may order an update to the Survey (or a new survey) and/or the Phase I (with the related costs to be paid by Purchaser) but the receipt of such updated or new survey or Phase I shall not extend the Closing Date, or be a condition to Closing. Purchaser may not undertake an invasive test of any part of the Property or any Phase II environmental investigation without the prior written approval of Seller, which approval may be withheld for any reason or no reason.

***Title Company.*** “*Title Company*” means First American Title Insurance Company located at 2425 E. Camelback Rd. #300, Phoenix, AZ 85016, Phone: 602-567-8139 Fax: 602-567-8101, with Kristen Brown, to serve as Escrow Officer hereunder selected by Seller in its sole discretion. The Title Company is hereby employed by the parties to act as escrow agent in connection with the Transaction. This Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however*, that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail. The Title Company’s receipt of this Agreement and the opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of the Title Company’s agreement to be bound by the terms and conditions of this Agreement pertaining to the Title Company.

(b) ***Title Company Actions.*** At Closing, the Title Company is authorized to pay, from any funds held by it for each party's respective credit and in accordance with the closing settlement statement executed by both parties, all amounts set forth on the closing settlement statement as necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them, respectively. Seller and Purchaser agree to pay all charges payable by them to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Seller and Purchaser to do so. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any such court. Deposit by the Title Company of such documents and funds, after deducting therefrom its reasonable expenses and attorneys' fees incurred in connection with any such court action, shall relieve the Title Company of all further liability and responsibility for such documents and funds.

(c) ***Permitted Exceptions.*** Seller shall not be obligated to cure or satisfy any new requirements and exceptions contained on an updated Title Commitment and shall not be obligated to cure any new matters disclosed by an updated Survey. The conveyance of the Property shall be subject to certain Permitted Exceptions. The term "Permitted Exceptions" as used herein, shall mean (i) the Title Exceptions listed in Schedule B of the Title Commitment, (ii) any general exceptions and exclusions contained in the standard owner's policy of the Title Company that are not deleted pursuant to the Owner's Affidavit, (iii) all title matters of record as of the date of closing, and (iv) all taxes not yet due and payable.

## **Section 2.02. Inspection Period; Indemnity; Termination Right.**

(a) ***Inspection Period.*** Purchaser represents and warrants to Seller that Purchaser has or has had the opportunity before the auction, independently and personally, to inspect the Property and that Purchaser has entered into this Agreement based upon its approval of such personal examination and inspection of the Property. Purchaser acknowledges and agrees that Purchaser is purchasing the Property in its current AS IS condition with all faults and that Seller has no obligation to make repairs, replacements or improvements to the Property, except as may be expressly stated otherwise herein. Purchaser shall bear the cost of all such inspections and investigations of the Property and shall repair any damage to the Property as a result of or caused by the entry onto or inspection or testing of the Property by Purchaser or Purchaser's employees, agents or contractors.

(b) ***Indemnity.*** Purchaser shall indemnify, defend and hold harmless Seller and its directors, officers, shareholders, managers, members, employees, representatives, successors, assigns, agents, lenders, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees and invitees, as applicable, for, from and against any and all Losses of any nature arising from or connected with the Inspections.

(c) **Termination Right.** If this Agreement is terminated for any reason, Purchaser shall, within ten (10) days of such termination, deliver to Seller or Auction Company copies of the Title Commitment, Survey, Phase I and any updates, and other information obtained by Purchaser with respect to the Property.

### ARTICLE III

#### CLOSING

**Section 3.01. Closing Date.** Subject to the provisions of Article IV of this Agreement, the closing date of the Transaction contemplated by this Agreement (the “Closing”) shall occur on the date that is thirty (30) days following the Auction Date, which date shall be \_\_\_\_\_, 2015 or such earlier date as set by mutual agreement of Seller and Purchaser (the “Closing Date”).

**Section 3.02. Possession.** Seller shall deliver possession of the Property to Purchaser upon Closing, subject to the Permitted Exceptions.

#### **Section 3.03. Prorations; Diligence and Transaction Fees and Costs.**

(a) **Taxes.** All real estate taxes and assessments and personal property taxes relating to the Property for the year of Closing shall be prorated as of the Closing Date. Real estate tax amounts shall be based on the most recent mill levy and most recent assessed valuation, or, if not available, on the real estate taxes for the calendar year immediately preceding Closing. All prorations shall be final.

(b) **Third Party Service Contracts and Maintenance Expenses; Utilities; Insurance.** There shall be no proration of any third party services contracts, maintenance expenses, water, sewer or other utility charges or insurance agreements upon the Closing. Seller agrees to take commercially reasonable efforts to cause any third party service contracts relating to the Property and maintenance services provided to the Property to be terminated as of the Closing Date, and immediately upon the Closing, Purchaser shall be solely responsible for the provision of any third party services or maintenance to the Property. Seller further agrees to take commercially reasonable efforts to cause any utility services to the Property to be terminated as of the Closing Date, and immediately upon the Closing, Purchaser shall be solely responsible for the provision of utilities to the Property. Seller shall retain all security deposits and other similar amounts paid to any utility provider, and Purchaser shall be responsible to provide replacement deposits and similar amounts. In addition, on the Closing Date Seller shall notify its insurance carrier to cancel all policies applicable to the Property as of the Closing Date.

(c) **Diligence and Transaction Fees and Costs.** Except as otherwise expressly provided in this Agreement, Purchaser shall pay for all costs associated with its diligence activities, including without limitation, updates (if any) to the Survey and any new survey, and the cost of updates (if any) to any new Phase I environmental assessment report. Purchaser shall pay for the premium for the Title Policy and all endorsements related to the Title Policy. Purchaser shall pay

for any and all other fees, costs and expenses associated with the Closing including, without limitation, all recording fees, all transfer, stamp, documentary, transaction privilege, franchise, sales or similar taxes, if any (but expressly excluding any income tax imposed on Seller), all title, search and escrow fees and any special assessment searches and any and all other closing fees, costs and expenses incurred in connection with the Transaction. In addition, Purchaser shall reimburse Seller for the cost of (a) the Title Commitment and any search fees, and costs for any recertifications, endorsements, and updates thereof required in connection herewith. Each party shall pay its own legal fees incurred in connection with the Transaction. Purchaser shall pay the cost of any escrow fees, closing fees, and any fees to prepare the Closing Statement charged by the Escrow Agent, and any costs associated with any financing obtained by Purchaser.

(d) ***Cancellation Fees and Costs.*** Purchaser shall pay to Title Company upon demand all title search and examination fees, abstract fees and escrow cancellation charges (collectively, "Cancellation Fees") if this Agreement is terminated for any reason, except by reason of an Event of Default caused by Seller (in which case, such Cancellation Fees shall be paid by Seller).

### **Section 3.04. Closing Deliveries.**

(a) ***Seller Closing Deliveries.*** At least one (1) Business Day prior to the scheduled Closing Date, Seller agrees to deliver the following documents to the Title Company (fully executed and notarized by Seller as appropriate):

(i) Deed (the "Deed"), which shall mean that special warranty deed (or its equivalent under the law of the state in which the Property is located) whereby Seller conveys to Purchaser all of Seller's right, title and interest in and to the Property, subject to all current taxes not yet due and payable, assessments and any other liens arising therefrom, all reservations in patents, deed restrictions, if any, all easements, rights of way, covenants, conditions, restrictions, encroachments, liens, encumbrances, obligations and liabilities as may appear of record, and all other matters that can be determined by a visual inspection or a complete and accurate survey of the Property;

(ii) Non-Foreign Seller's Certificate (the "FIRPTA"), certifying that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Act of 1980 and the 1984 Tax Reform Act, as amended;

(iii) A Quitclaim Bill of Sale (the "Bill of Sale") for the Tangible Personal Property in the form attached as Exhibit B;

(iv) a closing settlement statement reflecting the prorations, credits and adjustments contemplated by or specifically provided for in this Agreement; and

(v) such further documents as reasonably may be required by the Title Company in order to fully and legally close the Transaction.

(b) **Purchaser Closing Deliveries.** At least one (1) Business Day prior to the scheduled Closing Date (except as set forth below), Purchaser agrees to deliver the following items (fully executed and notarized by Purchaser as appropriate) to the Title Company:

(i) the Purchase Price (in accordance with Section 1.02), subject to the prorations, credits and adjustments contemplated by or specifically provided for in this Agreement, on or before 1:00 p.m., local time on the Closing Date where the Property is located;

(ii) a closing settlement statement reflecting the prorations, credits and adjustments contemplated by or specifically provided for in this Agreement;

(iii) such further funds, documents, instruments and certificates as reasonably may be required by the Title Company or Seller in order to fully and legally close the Transaction; and

(iv) all other funds, documents, instruments and certificates required to be delivered to the appropriate Person by this Agreement.

#### **ARTICLE IV**

#### **CONDITIONS PRECEDENT TO CLOSING**

**Section 4.01. Purchaser's Conditions to Closing.** The following conditions must be satisfied not later than the Closing Date or such period of time as may be specified below and, as such, are conditions precedent for Purchaser to proceed with the Closing:

(a) Seller shall have delivered to the Title Company (or other appropriate Person) the items described in Section 3.04(a) in accordance therewith; and

(b) As of the Closing Date, the Title Company will issue or have irrevocably committed to issue the Title Policy (as defined in Section 2.01) to Purchaser, subject to the Permitted Exceptions.

If the foregoing conditions set forth in this Section 4.01 are not satisfied or waived by Purchaser on or prior to the Closing Date, Purchaser may, at its election, terminate this Agreement by written notice delivered to Seller and to the Title Company, in which case, so long as Purchaser has not caused an Event of Default, the Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement.

**Section 4.02. Seller's Conditions Precedent to Closing.** The following conditions must be satisfied not later than the Closing Date or such period of time as may be specified below and, as such, are conditions precedent for Seller to proceed with the Closing:

(a) Purchaser shall have delivered to the Title Company (or other appropriate Person) the items described in Section 3.04(b) in accordance therewith; and

(b) Seller shall have obtained all third party consents deemed necessary in Seller's sole discretion for the (i) Transaction, (ii) for financial ratings agency authorizations, and and (iii) the release of any Seller mortgage or other document (including any securitization document) which encumbers the Property.

If the foregoing conditions set forth in this Section 4.02 are not satisfied or waived by Seller on or prior to the Closing Date, Seller may, at its election, terminate this Agreement, in which case, so long as Purchaser has not caused an Event of Default, the Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement.

## ARTICLE V

### NO REPRESENTATIONS OR WARRANTIES BY SELLER

**Section 5.01. Disclaimer.** PURCHASER ACKNOWLEDGES AND AGREES THAT NEITHER SELLER NOR ITS AGENTS HAVE MADE AND DO NOT MAKE, AND SELLER AND ITS AGENTS SPECIFICALLY NEGATE AND DISCLAIM, ANY REPRESENTATIONS, WARRANTIES (OTHER THAN THE WARRANTY OF TITLE AS SET OUT IN THE DEED), PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, (D) THE COMPLIANCE IF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER AND ITS AGENTS HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY DISCLAIM ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE, ZONING, FLOOD ZONE OR DEVELOPMENT OF REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS

OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS (AS DEFINED BELOW), RADON, MOLD OR MILDEW. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, PURCHASER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER OR ITS AGENTS AND AT THE CLOSING AGREES TO ACCEPT THE PROPERTY AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST SELLER AND/OR SELLER'S AGENTS (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY OR TO ANY HAZARDOUS MATERIALS ON THE PROPERTY, MOLD OR MILDEW. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT NEITHER SELLER NOR ITS AGENTS HAVE MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER AND ITS AGENTS ARE NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, AUCTIONEER OR OTHER PERSON. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY IS PROVIDED FOR HERIEN IS MADE ON AN 'AS IS' CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS SECTION 5.01 SHALL SURVIVE THE CLOSING.

**Section 5.02. Hazardous Materials.** "Hazardous Materials" shall mean any substance which is or contains (a) those substances included within any of the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, or the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., and in the regulations promulgated pursuant thereto; (b) those substances listed in the United States Department of Transportation Hazardous Materials Table at 49 CFR 172.101 and amendments thereto, or by the U.S. Environmental Protection Agency as hazardous substances in 40 CFR Part 302 and amendments thereto; (c) gasoline, diesel fuel or other petroleum hydrocarbons; (d) asbestos or asbestos containing materials, in any form, whether friable or non-friable; (e) polychlorinated biphenyls, (f) radon gas; and (g) all other substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under, any Environmental Law (as hereinafter defined) or the common law, or any other applicable laws relating to the Property. Hazardous Material shall include, without limitation, any substance, the presence of which on the Property, (A) requires reporting, investigation or remediation under Environmental Law, (B) causes or threatens to cause a nuisance on the Property or adjacent Property or poses or threatens to pose a hazard to the health and safety of persons on the Property



or adjacent property; of (C) which, if it emanated or migrated from the Property, could constitute a trespass. “*Environmental Law*” means, as amended and in effect from time to time, any federal, state or local statute, ordinance, rule, regulation, standard, restriction, judicial decision, or the judgment or decree of a Governmental Authority, arbitrator or other private adjudicator by which Purchaser or the Property is bound, pertaining to health, welfare, industrial hygiene, occupational safety or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation & Liability Act of 1980, the Resource, Conservation & Recovery Act of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 *et seq.*, the Emergency Planning and Community Right to Know Act, 42 U.S.C. Sec. 11001 *et seq.*, and all rules adopted and guidelines promulgated pursuant to the foregoing including their state and local counterparts or equivalents exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment, including without limitation ambient air, surface water, ground water or land or soil.

**Section 5.02. Environmental Risks.** Purchaser acknowledges that there are, or may be, certain environmental issues and/or risks with respect to the Property.

**Section 5.03. Indemnity.** Purchaser hereby expressly acknowledges that from and after the Closing Date, Seller shall have no responsibility, liability or obligation subsequent to the Closing with respect to any conditions relating to the Property, including, without limitation, environmental conditions, or as to any other matters whatsoever respecting in any way to the Property. Purchaser agrees that the Seller and the Indemnified Parties shall not be liable or responsible after the Closing to Purchaser for environmental conditions that include, without limitation, past disposal of Hazardous Substances on, in or under the Property, the presence of man-made or natural substances, and such other conditions as may exist in the soil, surface water or ground water as pertains to the Property which could require remedial action or which may result in liabilities or claims made on Purchaser or any Indemnified Party by third parties including government agencies. The term “Indemnified Parties” as use herein shall mean Seller’s officers, directors, shareholders, trustees, partners, employees, members, managers, agents, contractors and affiliates. This Section 5.03 shall survive the Closing or termination of this Agreement.

**Section 5.04. Release of Seller.** Notwithstanding anything to the contrary contained in this Agreement (except as hereinafter provided), Purchaser, for itself and its agents, affiliates, successors and assigns, hereby releases, acquits and forever discharges Seller and the Indemnified Parties from any and all Losses, which Purchaser has or may have in the future, arising from or relating to (i) any defects (patent or latent), errors or omissions in the Property whether the same are the result of any Indemnified Party’s actions, omissions or negligence; or (ii) any other conditions, including, without limitation, environmental and other physical conditions affecting the Property whether the same are the result of any Indemnified Party’s actions, omissions or negligence, including any claim for indemnification or contribution arising under the

Comprehensive Environmental Response, Compensation And Liability Act (42 U.S.C. Section 9601 et seq.) or any other federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters, whether arising based on events that occurred before, during, or after Seller's period of ownership of the Property and whether based on theories of indemnification, contribution or otherwise. The release set forth in this Section specifically includes, without limitation, any claims under any Environmental Laws. Purchaser acknowledges that Purchaser had the opportunity to consult with independent legal counsel of Purchaser's selection and Purchaser is granting this release of its own volition and after appropriate consultation. The release set forth herein does not apply to the representations, and warranties and covenants of Seller expressly set forth in this Agreement or in any document delivered by Seller at the Closing. Purchaser hereby specifically acknowledges that Purchaser has carefully reviewed this Section and has had the opportunity to discuss its import with legal counsel and that the provisions of this Section are a material part of this Agreement. The provisions of this Section 5.04 shall survive the Closing or termination of this Agreement.

## ARTICLE VI

### DEFAULTS; REMEDIES

**Section 6.01. Default by Purchaser.** The parties acknowledge that in the event of a default by Purchaser, Seller's actual damages would be extremely difficult or impracticable to determine, therefore, the parties agree that the amount of the Deposit plus the Purchaser's Premium has been agreed upon as the parties' reasonable estimate of Seller's damages, and in the event that Purchaser fails to perform all of Purchaser's obligations under this Agreement, and any such failure continues for five (5) Business Days after written notice (which written notice shall detail such failure), the Deposit made hereunder by Purchaser, together with all interest thereon, shall be paid to Seller, and Purchaser shall also pay to Seller the Purchaser's Premium, as liquidated damages and such shall be Seller's sole and exclusive remedy at law or in equity for any default by Purchaser under this Agreement. **NOTHING IN THIS SECTION 6.01 SHALL BE DEEMED IN ANY WAY TO LIMIT, AFFECT OR IMPAIR ANY OF PURCHASER'S INDEMNITIES OR OBLIGATIONS THAT SURVIVE THE TERMINATION OF THIS AGREEMENT OR LIMIT OR IMPAIR SELLER FROM PURSUING ANY REMEDIES AVAILABLE TO SELLER AT LAW OR IN EQUITY AS A RESULT OF SUCH INDEMNIFICATIONS OR OTHER OBLIGATIONS OF PURCHASER THAT SURVIVE THE TERMINATION OF THIS AGREEMENT.**

#### **Section 6.02. Default by Seller.**

(a) In the event of any Event of Default by Seller on or before the Closing Date, then, Purchaser may elect, as its sole and exclusive remedy, to either (i) waive such default and seek specific performance of this Agreement, or (ii) terminate this Agreement by delivering written notice to Seller and Title Company and immediately upon termination by Purchaser, Title Company shall pay to Purchaser, as Purchaser's sole remedy, the Deposit. If Purchaser elects to seek specific performance such remedy must be elected by Purchaser, and a lawsuit filed by Purchaser, no later than thirty (30) days following the scheduled Closing Date, otherwise Purchaser

shall be deemed to have elected the remedy set forth in subsection (ii) of the preceding sentence.

(b) After the Closing, Purchaser's sole remedy for a breach by Seller of an obligation that survives Closing shall be for Purchaser to bring an action resulting from any such breach within ninety (90) days of the Closing Date. If for any reason Purchaser does not bring an action within such time period, Purchaser shall be deemed to have forever waived any and all claims against Seller. Further, Seller's maximum liability for any breach of this Agreement after the Closing shall be limited to Ten Thousand and 00/100 Dollars (\$10,000).

**Section 6.03. Waiver. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT OR INSTRUMENT CONTEMPLATED HEREIN OR RELATED HERETO.**

## ARTICLE VII

### MISCELLANEOUS

#### **Section 7.01. Risk of Loss.**

(a) **Condemnation.** If, prior to Closing, action is initiated to take the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Purchaser may elect within five (5) Business Days of receiving notice thereof to (i) terminate this Agreement, in which event the Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, or (ii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority, to the extent that the amount of such award does not exceed the Purchase Price, shall be assigned to Purchaser at Closing and there shall be no reduction in the Purchase Price.

(b) **Casualty.** Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until Closing has been consummated. If the Property, or any part thereof, suffers any damage prior to Closing from fire or other casualty, which Seller, at its sole option, does not elect to repair, Purchaser may elect within five (5) Business Days of receiving notice thereof, to (i) terminate this Agreement, in which event the Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or (ii) consummate Closing, in which event all of Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any deductible actually paid, expenses and costs incurred by Seller to repair or restore the Property for the period prior to the Closing Date, all of which shall be payable to Seller), to the extent that the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at Closing, and Purchaser shall receive a credit against the Purchase Price in an amount equal to the deductible

with respect to Seller's insurance. For the purpose of this Section 8.01(b), the term "proceeds" shall mean the total amount of property insurance coverage carried by Seller on the Property net the deductible.

**Section 7.02. Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively, the "Notices") shall be in writing and given by (a) hand delivery; (b) express overnight delivery service; (c) certified or registered mail, return receipt requested; or (d) electronic mail message, and shall be deemed to have been delivered upon (i) receipt, if hand delivered; (ii) the next Business Day, if delivered by a reputable express overnight delivery service; (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested; or (iv) transmission. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Purchaser: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

If to Seller: Spirit Master Funding III, LLC  
16767 North Perimeter Drive  
Scottsdale, AZ 85260  
Attention: Bill Totherow, Asset Manager  
Telephone: (480) 368-3614  
E-Mail: [btotherow@spiritrealty.com](mailto:btotherow@spiritrealty.com)

With copies to: Spirit Master Funding III, LLC  
16767 North Perimeter Drive  
Scottsdale, AZ 85260  
Attention: Ms. Jean M. Emery  
Telephone: (480) 368-3218  
E-Mail: [jemery@spiritrealty.com](mailto:jemery@spiritrealty.com)

If to Title Company: First American Title Insurance Company  
2425 E. Camelback Road, Suite 300  
Phoenix, AZ 85016  
Attention: Kristen Brown, Senior Commercial Escrow Officer  
Telephone: (602) 567-8139  
Facsimile: (602) 567-8101  
E-Mail: [kribrown@firstam.com](mailto:kribrown@firstam.com)

or to such other address or such other Person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

**Section 7.03. Assignment.** Purchaser may not assign its rights under this Agreement in whole or in part without the prior written consent of Seller.

**Section 7.04. Brokerage Commission.** Seller agrees to pay Auction Company pursuant to a separate agreement. Purchaser hereby provides notice that \_\_\_\_\_ (“Purchaser’s Broker”) represents Purchaser in this transaction. Purchaser agrees to pay any commission due Purchaser’s broker, if applicable. Purchaser acknowledges that Seller has no obligation, either express or implied, to Purchaser’s Broker and this Agreement shall not create any privity of contract between Seller and Purchaser’s Broker. Any commissions due Auction Company or Purchaser’s Broker shall only be paid upon Closing. A broker cannot act as a principal and a broker on the same transaction.

If any other person shall assert a claim to a finder’s fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with the Transaction, the party under whom the finder or broker is claiming shall indemnify, defend, and hold harmless the other party and such party’s affiliates for, from and against any and all Claims in connection with such claim or any action or proceeding brought on such claim including but not limited to fees and court costs in defending against such claim. This indemnity obligation shall survive the Closing or termination of this Agreement.

**Section 7.05. Reporting Requirements.** The parties agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

**Section 7.06. Disclosure.** Except as expressly provided in Section 7.05, in this Section 7.06 or by law or judicial action, neither Seller nor Purchaser will make any public disclosure of this Agreement or the other documents and instruments delivered in accordance with this Agreement, the Transaction or the provisions of the documents and instruments delivered in accordance with this Agreement without the prior written consent of the other party hereto; *provided, however*, that after the Closing, each party hereto may publicly disclose the Transaction

and may issue a press release regarding the Transaction. The parties also agree that, notwithstanding any provision contained in this Agreement, any party (and each employee, representative or other agent of any party) may disclose to *any and all Persons, without limitation of any kind*, any matter required under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

**Section 7.07. Time of Performance.** Except as may otherwise be set forth in this Agreement, any performance provided for herein shall be timely made if completed no later than 5:00 p.m., local time, where the Property is located, on the day of performance.

**Section 7.08. Time is of the Essence.** The parties hereto expressly agree that time is of the essence with respect to this Agreement.

**Section 7.09. Non-Business Days.** If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which the Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

**Section 7.10. Waiver and Amendment.** No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. This Agreement may only be amended by a written agreement executed by Seller and Purchaser.

**Section 7.11. Headings; Internal References.** The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement.

**Section 7.12. Construction Generally.** This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction, is entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Seller and Purchaser were each given opportunity to consult with independent legal counsel of such party's choice competent in advising them of their obligations and liabilities hereunder.

**Section 7.13. Further Assurances.** Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and

deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

**Section 7.14. Attorneys' Fees.** In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

**Section 7.15. Entire Agreement.** This Agreement and all other documents, certificates, instruments or agreements to be delivered hereunder and thereunder constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. This Agreement shall supersede any previous discussions, agreements, letters of intent, term sheets or commitment letters relating to the Transaction, and the terms and conditions of this Agreement shall control notwithstanding that such terms are inconsistent with or vary from those set forth in any of the foregoing agreements.

**Section 7.16. Recording.** This Agreement shall not be recorded in any office of any Governmental Authority.

**Section 7.17. Forum Selection; Jurisdiction; Venue.** For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the of Arizona, and consent that they may be served with any process or paper by registered mail or by personal service within or without said state in accordance with applicable law. Nothing contained in this Section shall limit or restrict the right of Seller to commence any proceeding in the federal or state courts located in the state or states in which the Property is located to the extent Seller deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

**Section 7.18. Severability; Binding Effect; Governing Law.** Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 7.03, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the state of Arizona, without giving effect to any state's conflict of laws principles.

**Section 7.19. Survival.** Except for the conditions of Closing set forth in Article VI, which shall be satisfied or waived in writing as of the Closing Date, all representations, warranties, agreements, obligations and indemnities of Seller and Purchaser expressly set forth in this Agreement to survive the Closing or termination of this Agreement shall survive the Closing or

termination of this Agreement for the periods, if any, as expressly stated herein and otherwise indefinitely.

**Section 7.20. Waiver of Jury Trial.** THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO.

**Section 7.21. Counterparts; Electronic Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same document. Either party may deliver its signature to the other via facsimile or electronic transmission (such as in the form of a PDF), and any signature so delivered will be binding on the delivering party.

**Section 7.22. IRC Section 1031 Exchange of Property.** The parties agree that a party may elect to complete an Internal Revenue Code 1031 tax-deferred exchange that will not affect the terms and conditions of this Agreement; *provided, however*, that (a) the non-requesting party will cooperate with the requesting party to complete such exchange in a timely manner on the conditions that the non-requesting party shall not be obligated to pay, suffer or incur any additional expenses or liabilities as a result of cooperating in the requesting party's exchange and the non-requesting party shall not be obligated to acquire any other real property in connection with such exchange; (b) the non-requesting party shall not have any liability to the requesting party for failure of the exchange to qualify under the Internal Revenue Code and Treasury Regulations; (c) any assignment(s) made by the requesting party in connection with such exchange shall not relieve the requesting party of its obligations under this Agreement; (d) the requesting party shall cause all documentation necessary or appropriate in connection with such exchange to be prepared and available for execution no later than the Closing Date; and (e) the completion of one or more tax-deferred exchanges is not a condition to the performance by the requesting party of its obligations set forth in this Agreement.

**Section 7.23. Economic Sanctions Compliance.** Purchaser represents that neither Purchaser nor any of its subsidiaries or, to the knowledge of Purchaser, any director, officer, employee, agent, affiliate or representative of the Purchaser is an individual or entity ("Person") currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other relevant sanctions authority, nor is Purchaser located, organized or resident in a country or territory that is the subject of sanctions; and Purchaser represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and shall not engage in, any dealings or transactions with any Person, or in any country or territory, that is subject of sanctions.

**Section 7.24. Authority.** Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations, are enforceable in accordance with



their terms and the persons signing hereunder have authority to do so on behalf of the respective entity.

*[Remainder of page intentionally left blank; signature page(s) to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the Effective Date.

**SELLER:**

**SPIRIT MASTER FUNDING III, LLC,**  
a Delaware limited liability company

By: **Spirit SPE Manager, LLC**, a Delaware limited liability company, its manager

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT AND AGREEMENT BY THE AUCTION COMPANY**

The undersigned joins in the execution of this Agreement for the purpose of representing and warranting to Purchaser and Seller that the undersigned is (i) a duly licensed real estate broker and auctioneer under the real estate licensing act(s) of the State in which the Property is located and any applicable regulations, (ii) is duly authorized to earn and receive a commission in connection with the transaction evidenced by this Agreement, (iii) acknowledges and agrees to the terms and provisions of Section 7.04 hereof, and (iv) agrees to perform such obligations as are required of the Auction Company to collect the Deposit, wire such funds to the Escrow Agent, secure Purchaser's execution of this Agreement, and an authorized representative of Auction Company's signature hereto. The undersigned shall indemnify and hold Purchaser and Seller harmless from any loss, liability, damage, cost or expense (including attorney's fees) resulting by reason of a breach of the representations and warranties made herein.

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

**AUCTION COMPANY:**

**AUCTION MANAGEMENT CORPORATION,**  
a Georgia corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL PROPERTY**

**Property Address:**

37 Center Street

Hornell, NY

Tax Account Number 460600 151.80-02-11.200

**PIZZA HUT, INC.**

All that tract or parcel of land, situate in the City of Hornell, Steuben County, and State of New York, being further bounded and described as follows: Beginning at an iron pin at the point of intersection of the southerly street boundary of Elm Street with the westerly street boundary of Center Street; thence South 27 degrees and 09 minutes and 03 seconds West along said westerly street boundary of Center Street a distance of 240.00 feet to a point in the westerly boundary of Center Street; thence North 62 degrees and 50 minutes and 57 seconds West along a line parallel to and 60.00 feet northerly of, as measured at right angles to the southerly line of that parcel of land conveyed by Southern Tier Pizza Hut, Inc. to William A. Evans by deed dated August 9, 1978 and recorded in the Steuben County Clerk's Office August 30, 1978 in Liber 988 of Deeds at page 440, a distance of 130.43 feet to a point in the division line between the property of the People of the State of New York on the west and the aforesaid property of William A. Evans on the east; thence along said division line the following four (4) courses and distances: North 02 degrees and 51 minutes and 09 seconds East, 139.77 feet to a NYS right-of-way monument; North 24 degrees and 39 minutes and 39 seconds East, 31.62 feet to a NYS right-of-way monument; North 77 degrees and 42 minutes and 09 seconds East, 83.36 feet to an iron pin; and North 25 degrees and 36 minutes and 09 seconds East, a distance of 28.00 feet to an iron pin at the point of intersection of said division line with the aforementioned southerly street boundary of Elm Street; thence South 62 degrees and 52 minutes and 51 seconds East along said southerly street boundary of Elm Street, 125.70 feet to the point of beginning.

**AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

All that certain lot or parcel of ground situate in the City of Hornell, County of Steuben, State of New York, bounded and described as follows:

Beginning at a point located on the West-right-of-way line of Center Street, said point being situate at the intersection of the South right-of-way line of Elm Street with the aforementioned West right-of-way line of Center Street; THENCE FROM THE PLACE OF BEGINNING along the aforementioned West right-of-way line of Center Street, South twenty-seven degrees nine minutes and three seconds West (S 27°09'03" W) for a distance of two hundred forty and no hundredths feet (240.00') to a point; thence, North sixty-two degrees fifty minutes and fifty-seven seconds West (N 62°50'57" W) for a distance of one hundred thirty and forty-three hundredths feet (130.43') to a point; thence, North two degrees fifty one minutes and nine seconds East (N 2°51'09" E) for a distance of one hundred thirty-nine and seventy-seven hundredths feet (139.77') to a point; thence, North twenty-four degrees thirty-nine minutes and thirty-nine seconds East (N 24°39'39" E) for a distance of thirty-one and sixty-two hundredths feet (31.62') to a point; thence, North seventy-seven degrees forty-two minutes and nine seconds East (N 77°42'09" E) for a distance of eighty-three and thirty-six hundredths feet (83.36') to a point; thence, North twenty-five degrees thirty-six minutes and nine seconds East (N 25°36'09" E) for a distance of twenty-eight and no hundredths feet (28.00') to a point; thence along the aforementioned South right-of-way line of Elm Street, South sixty-two degrees fifty-two minutes and fifty-one seconds East (S 62°52'51" E) for a distance of one hundred twenty-five and seventy hundredths feet (125.70') to the place of beginning.

Containing 38,072.21 Square Feet (0.874 Acres).

**EXHIBIT B**  
**FORM OF**  
**QUITCLAIM BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS, that **SPIRIT MASTER FUNDING III, LLC**, a Delaware limited liability company ("Seller") pursuant to that certain Auction Purchase and Sale Agreement dated \_\_\_\_\_, 20\_\_\_\_, together with all amendments thereto, for the consideration of the sum of TEN and No/100 Dollars (\$10.00) in hand paid by \_\_\_\_\_, a \_\_\_\_\_ ("Purchaser") the receipt of which is hereby acknowledged, does hereby quitclaim to Purchaser, all of Seller's right, title and interest in and to all of the furniture, fixtures, equipment and other personal property (collectively, the "Personal Property") located at the real property on the Closing Date at **37 Center Street, Hornell, New York**, as legally described on Exhibit A attached hereto.

All Personal Property is transferred in its "as is" condition on the date hereof, and Seller makes no representations or warranties, whether express or implied, as to the condition of the Personal Property, including but not limited to any representations or warranties as to merchantability or fitness for any particular purpose of the Personal Property.

**IN WITNESS WHEREOF**, Seller has executed this Quitclaim Bill of Sale as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**SELLER:**

**SPIRIT MASTER FUNDING III, LLC**,  
a Delaware limited liability company

By: Spirit SPE Manager, LLC  
a Delaware limited liability company  
Its: Manager

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

**EXHIBIT A**  
**(Legal Description of Real Property)**

**Property Address:**

37 Center Street

Hornell, NY

Tax Account Number 460600 151.80-02-11.200

**PIZZA HUT, INC.**

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**AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

All that certain lot or parcel of ground situate in the City of Hornell, County of Steuben, State of New York, bounded and described as follows:

Beginning at a point located on the West right-of-way line of Center Street, said point being situate at the intersection of the South right-of-way line of Elm Street with the aforementioned West right-of-way line of Center Street; THENCE FROM THE PLACE OF BEGINNING along the aforementioned West right-of-way line of Center Street, South twenty-seven degrees nine minutes and three seconds West (S 27°09'03" W) for a distance of two hundred forty and no hundredths feet (240.00') to a point; thence, North sixty-two degrees fifty minutes and fifty-seven seconds West (N 62°50'57" W) for a distance of one hundred thirty and forty-three hundredths feet (130.43') to a point; thence, North two degrees fifty one minutes and nine seconds East (N 2°51'09" E) for a distance of one hundred thirty-nine and seventy-seven hundredths feet (139.77') to a point; thence, North twenty-four degrees thirty-nine minutes and thirty-nine seconds East (N 24°39'39" E) for a distance of thirty-one and sixty-two hundredths feet (31.62') to a point; thence, North seventy-seven degrees forty-two minutes and nine seconds East (N 77°42'09" E) for a distance of eighty-three and thirty-six hundredths feet (83.36') to a point; thence, North twenty-five degrees thirty-six minutes and nine seconds East (N 25°36'09" E) for a distance of twenty-eight and no hundredths feet (28.00') to a point; thence along the aforementioned South right-of-way line of Elm Street, South sixty-two degrees fifty-two minutes and fifty-one seconds East (S 62°52'51" E) for a distance of one hundred twenty-five and seventy hundredths feet (125.70') to the place of beginning.

Containing 38,072.21 Square Feet (0.874 Acres).