



CERTIFICATE OF TITLE

First American Title Insurance Company

Title No. NCS-871769NY1-PHX1

First American Title Insurance Company ("the Company") certifies to the "proposed insured(s)" listed herein that an examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue its standard form of title insurance policy authorized by the Insurance Department of the State of New York, in the amount set forth herein, insuring the interest set forth herein, and the marketability thereof, in the premises described in Schedule A, after the closing of the transaction in conformance with the requirements and procedures approved by the Company and after the payment of the premium and fees associated herewith excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of the policy.

This Agreement to insure shall terminate (1) if the prospective insured, his or her attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company; or (2) upon the issuance of title insurance in accordance herewith. In the event that this Certificate is endorsed and redated by an authorized representative of the Company after the closing of the transaction and payment of the premium and fees associated herewith, such "redated" Certificate shall serve as evidence of the title insurance issued until such time as a policy of title insurance is delivered to the insured. Any claim made under the redated Certificate shall be restricted to the conditions, stipulations and exclusions from coverage of the standard form of title insurance policy issued by the Company.

**THIS REPORT IS NOT A TITLE INSURANCE POLICY! PLEASE READ IT CAREFULLY.
THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY
NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY.
YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.**

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary



CLOSING REQUIREMENTS

1. **CLOSING DATE:** In order to facilitate the closing of title, please notify the closing department at least 48 hours prior to the closing, of the date and place of closing, so that searches may be continued.
2. **PROOF OF IDENTITY:** Identity of all persons executing the papers delivered on the closing must be established to the satisfaction of the Company.
3. **POWER OF ATTORNEY:** If any of the closing instruments are to be executed pursuant to a Power of Attorney, a copy of such Power should be submitted to the Company prior to closing. THE IDENTITY OF THE PRINCIPAL EXECUTING THE POWER AND THE CONTINUED EFFECTIVENESS OF THE POWER MUST BE ESTABLISHED TO THE SATISFACTION OF THE COMPANY. The Power must be in recordable form.
4. **CLOSING INSTRUMENTS:** If any of the closing instruments will be other than commonly used forms or contain unusual provisions, the closing can be simplified and expedited by furnishing the Company with copies of the proposed documents in advance of closing.
5. **LIEN LAW CLAUSE:** Deeds and mortgages must contain the covenant required by Section 13 of the Lien Law. The covenant is not required in deeds from referees or other persons appointed by a court for the sole purpose of selling property.
6. **REFERENCE TO SURVEYS AND MAPS:** Closing instruments should make no reference to surveys or maps unless such surveys or maps are on file.
7. **INTERMEDIARY DEEDS:** In the event an intermediary will come into title at closing, other than the ultimate insured, the name of such party must be furnished to the Company in advance of closing so that appropriate searches can be made and relevant exceptions considered.

MISCELLANEOUS PROVISIONS

1. THIS CERTIFICATE IS INTENDED FOR LAWYERS ONLY. YOUR LAWYER SHOULD BE CONSULTED BEFORE TAKING ANY ACTION BASED UPON THE CONTENTS HEREOF.
2. THE COMPANY'S CLOSER MAY NOT ACT AS LEGAL ADVISOR FOR ANY OF THE PARTIES OR DRAW LEGAL INSTRUMENTS FOR THEM. THE CLOSER IS PERMITTED TO BE OF ASSISTANCE ONLY TO AN ATTORNEY.
3. Our policy will except from coverage any state of facts which an accurate survey might show, unless survey coverage is ordered. When such coverage is ordered, this certificate will set forth the specific survey exceptions which we will include in our policy. Whenever the word "trim" is used in any survey exceptions from coverage, it shall be deemed to include, roof cornices, mouldings, belt courses, water tables, keystones, pilasters, portico, balcony all of which project beyond the street line.
4. Our examination of the title includes a search for any unexpired financing statements which affect fixtures and which have been properly filed and indexed pursuant to the Uniform Commercial Code in the office of the recording officer of the county in which the real property lies. No search has been made for other financing statements because we do not insure title to personal property. We will on request, in connection with the issuance of a title insurance policy, prepare such search for an additional charge. Our liability in connection with such search is limited to \$1,000.00.
5. This company must be notified immediately of the recording or the filing, after the date of this certificate, of any instrument and of the discharge or other disposition of any mortgage, judgment, lien or any other matter set forth in this certificate and of any change in the transaction to be insured or the parties thereto. The continuation will not otherwise disclose the disposition of any lien.
6. If affirmative insurance is desired regarding any of the restrictive covenants with respect to new construction or alterations, please request such insurance in advance of closing as this request should not be considered at closing.
7. If it is discovered that there is additional property or an appurtenant easement for which insurance is desired, please contact the Company in advance of closing so that an appropriate title search may be made. In some cases, our rate manual provides for an additional charge for such insurance.



Proposed Insured
Purchaser: TBD
Mortgagee:

First Amendment
Title No.: **NCS-871769NY1-PHX1**
Effective Date: 10/05/2017
Redated:

Amount of Insurance:
Fee: \$0.00
Mortgage: \$0.00

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule "A", subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and or mortgaged by:

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

Who acquired title by deed from Spirit Master Funding IV, LLC dated as of 8/27/2009 recorded 9/29/2009 in Book 1233 of Deeds, Page 179 (see post).

Premises described in Schedule "A" are known as:

Address: 812 Hamilton Street,
Geneva, New York

County: Ontario

Town: Geneva

Section: 103.04

Block: 1

Lot: 25.300

**For any Title Clearance Questions
on this Report please call**

(602)567-8100

RJW/ca



Title No. NCS-871769NY1-PHX1

SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD, ALSO KNOWN AS THE OLD BUFFALO AND ALBANY TURNPIKE, U.S. ROUTE 20 AND N.Y.S ROUTE 5, SAID POINT BEING 219.16 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD WITH THE EASTERLY LINE OF TREMONT STREET.

THENCE NORTH 16° 21' 00" EAST A DISTANCE OF 250.00 FEET;

THENCE SOUTH 73° 39' 00" EAST PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 27.00 FEET TO THE NORTHWEST CORNER OF FFCA ACQUISITION CORPORATION BY DEED RECORDED IN LIBER 984 OF DEEDS AT PAGE 672;

THENCE CONTINUING SOUTH 73° 39' 00" EAST PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 123.00 FEET TO THE NORTHWESTERLY CORNER OF MOSIER ENTERPRISES, INCORPORATED BY DEED RECORDED IN LIBER 819 OF DEEDS AT PAGE 960;

THENCE SOUTH 16° 21' 00" WEST ALONG THE WESTERLY LINE OF SAID MOSIER ENTERPRISES, INCORPORATED A DISTANCE OF 250.00 FEET TO THE NORTHERLY LINE OF HAMILTON ROAD;

THENCE NORTH 73° 39' 00" WEST ALONG THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 150.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SAID PROPERTY MAY ALSO BE DESCRIBED AS FOLLOWS:

PARCEL 1

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK, SITUATED ON THE NORTH SIDE OF THE STREET OR HIGHWAY FORMERLY KNOWN AS HAMILTON STREET AND ALSO KNOWN AS THE OLD BUFFALO AND ALBANY TURNPIKE AND BEGINNING AT A POINT IN THE NORTHERLY LINE OF THE SAID HIGHWAY OR STREET WHICH SAID POINT IS 30 FEET SOUTHERLY FROM THE POINT OF INTERSECTION OF THE WESTERLY LINE OF THE PREMISES OWNED IN FEE BY LAFAYETTE, INN, INC, AND THE NORTHERLY LINE OF SAID HIGHWAY ALL AS MEASURED ALONG THE NORTH LINE OF SAID HIGHWAY;

THENCE (1) IN A NORTHERLY DIRECTION AND ALONG A STRAIGHT LINE PARALLEL TO THE WESTERLY LINE OF THE PREMISES OWNED IN FEE BY LAFAYETTE INN, INC., A DISTANCE OF 208 FEET MORE OR LESS, TO A POINT;

THENCE (2) IN AN EASTERLY DIRECTION AND ALONG A LINE PARALLEL TO THE NORTHERLY LINE OF SAID HIGHWAY, A DISTANCE OF 150 FEET TO A POINT;

THENCE (3) IN A SOUTHERLY DIRECTION AND ALONG A LINE PARALLEL TO COURSE (1) TO A POINT IN THE NORTHERLY LINE OF SAID HIGHWAY OR STREET FORMERLY KNOWN AS HAMILTON STREET;

THENCE (4) IN A WESTERLY DIRECTION AND ALONG SAID NORTHERLY LINE OF SAID HIGHWAY OR STREET A DISTANCE OF 150 FEET TO THE POINT OF BEGINNING.

CONTINUED...



TITLE NO. NCS-871769NY1-PHX1
SCHEDULE "A" CONTINUED

EXCEPT BEGINNING AT A POINT ON THE APPARENT NORTH HIGHWAY BOUNDARY OF NEW YORK STATE ROUTE 5 & U.S. ROUTE 20 AT THE SOUTHWEST CORNER OF THE PREMISES, SAID POINT BEING EASTERLY ALONG THE APPARENT NORTH HIGHWAY BOUNDARY OF SAID HIGHWAY A DISTANCE OF 369 FEET MORE OR LESS FROM THE INTERSECTION OF THE APPARENT NORTH HIGHWAY BOUNDARY OF SAID HIGHWAY WITH THE APPARENT EAST STREET LINE OF TREMONT STREET.

THENCE, RUNNING NORTH 16° 21' EAST ALONG THE WEST LINE OF THE PREMISES TO BE CONVEYED A DISTANCE OF 250.00 FEET TO A POINT, SAID POINT BEING THE NORTHWEST CORNER OF THE PREMISES.

THENCE, RUNNING SOUTH 73° 39' EAST ALONG THE NORTH LINE OF THE PREMISES A DISTANCE OF 27.00 FEET TO A POINT MARKED BY AN IRON PIN, SAID POINT BEING THE NORTHWEST CORNER OF MOSIER ENTERPRISES, INC. (LIBER 819 PAGE 960).

THENCE, RUNNING SOUTH 16° 21' WEST ALONG THE WEST LINE OF MOSIER ENTERPRISES, INC. A DISTANCE OF 250.00 FEET TO A POINT MARKED BY AN IRON PIN, SAID POINT BEING ON THE APPARENT NORTH HIGHWAY BOUNDARY OF NEW YORK STATE ROUTE 5 & U.S. ROUTE 20

THENCE, RUNNING NORTH 73° 39' WEST ALONG THE APPARENT NORTH HIGHWAY BOUNDARY OF NEW YORK STATE ROUTE 5 & U.S. ROUTE 20 A DISTANCE OF 27.00 FEET TO THE POINT OF BEGINNING.

AND ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK;

PARCEL 2

BEGINNING AT A POINT ON THE APPARENT NORTH HIGHWAY BOUNDARY OF NEW YORK STATE ROUTE 5 & U.S. ROUTE 20 AT THE SOUTHWEST CORNER OF THE PREMISES, SAID POINT BEING EASTERLY ALONG THE APPARENT NORTH HIGHWAY BOUNDARY OF SAID HIGHWAY A DISTANCE OF 219 FEET MORE OR LESS FROM THE INTERSECTION OF THE APPARENT NORTH HIGHWAY BOUNDARY OF SAID HIGHWAY WITH THE APPARENT EAST STREET LINE OF TREMONT STREET.

THENCE, RUNNING NORTH 16° 21' EAST ALONG THE WEST LINE OF THE PREMISES TO BE CONVEYED A DISTANCE OF 250.20 FEET TO A POINT, SAID POINT BEING THE NORTHWEST CORNER OF THE PREMISES.

THENCE, RUNNING SOUTH 73° 39' EAST ALONG THE NORTH LINE OF THE PREMISES A DISTANCE OF 27.00 FEET TO A POINT MARKED BY AN IRON PIN, SAID POINT BEING THE NORTHWEST CORNER OF FFCA ACQUISITION CORP. (LIBER 984 PAGE 692).

THENCE, RUNNING SOUTH 16° 21' WEST ALONG THE WEST LINE OF FFCA ACQUISITION CORP. A DISTANCE OF 250.00 FEET TO A POINT MARKED BY AN IRON PIN, SAID POINT BEING ON THE APPARENT NORTH HIGHWAY BOUNDARY OF NEW YORK STATE ROUTE 5 & U.S. ROUTE 20.

THENCE, RUNNING NORTH 74° 02' WEST ALONG THE APPARENT NORTH HIGHWAY BOUNDARY OF NEW YORK STATE ROUTE 5 AND U.S. ROUTE 20 A DISTANCE OF 27.00 FEET TO THE POINT OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

FOR CONVEYANCING ONLY: TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.



Title No. NCS-871769NY1-PHX1

SCHEDULE "B-I"
(REQUIREMENTS)

THE FOLLOWING ARE REQUIREMENTS TO BE COMPLIED WITH FOR A TITLE POLICY TO ISSUE:

1. Searches, including judgments, federal tax liens and bankruptcies in the Western District have been run against SPIRIT MASTER FUNDING III, LLC, the certified owner(s) herein and the following must be disposed of: NO RETURNS
2. Re: SPIRIT MASTER FUNDING III, LLC, a Delaware limited liability company
 - (a) Proof is required of its formation and that it has not been dissolved. Proof is also required that there has been no change in the composition of the Limited Liability Company.
 - (b) A copy of its Articles of Organization and any amendments thereto, must be delivered to the Company for review in advance of closing.
 - (c) A copy of its Operating Agreement and any amendments thereto, must be delivered to the Company for review in advance of closing.
 - (d) Proof is required that the transaction to be insured has been duly authorized.
 - (e) A Certificate of Good Standing from the state of formation must be submitted.
 - (f) Proof of its authority to acquire, convey, lease or mortgage the premises described in Schedule A, as applicable, under the laws of the state of formation, must be submitted in advance of closing. (Note: a foreign limited liability company can have no greater powers than a domestic limited liability company under section 805(b) of the New York Limited Liability Company Law).
 - (g) The name(s) of the managing member(s) must be furnished to this Company in advance of the closing so that federal tax lien and bankruptcy searches can be run. If the limited liability company does not have managing members, please contact Company Counsel to identify the names of the members as to whom said searches are to be run.
3. The name of the proposed mortgagor must be disclosed to the Company in advance of closing so that the appropriate bankruptcy and lien searches can be run.
4. If the proposed mortgagor is an entity, the Certificate (Articles) and Agreements relating to its formation and operation and any amendments thereto and proof of its good standing and authority to acquire or lease and mortgage under the laws of the state (country) of its formation must be furnished the Company in advance of the closing.
5. Closing mortgage/deed must contain the following recital: Being the same premises conveyed to the party of the first part herein by deed recorded on 9/29/2009 in(as) Book 1233 of Deeds, Page 179.



Title No. NCS-871769NY1-PHX1

SCHEDULE B-I Continued
(REQUIREMENTS)

6. To verify at closing the identity of the persons who are executing closing documents, two forms of identification, at least one of which is to contain a photograph, is required to be presented.
7. Note: Payment at closing of any amount exceeding \$5,000.00 must be made by a bank or certified check, by a check issued from an attorney's escrow account, or by wired funds.
8. FOR INFORMATION ONLY:

RE: Real Property Tax Payments

NOTE: The recording of documents has been significantly delayed by many county recording offices in New York State. When real estate tax payments become due prior to the recording of a deed, the local tax assessor may not have sufficient information as to where tax bills are to be sent. Where this is an issue, it may be advisable to contact the office of your local tax assessor with a copy of the closing deed. First American is not responsible for the failure to receive real estate tax bills or for any additional charges that may result from the failure to timely pay such amounts. The prompt payment of real estate taxes is the responsibility of the property owner and its mortgage lender.
9. Note: Contact Counsel for the Company in advance of closing if a document is to be executed pursuant to a power of attorney.
10. Note: County Clerks require that each Form RP-5217, the Real Property Transfer Report, be printed as a 8 ½" X 14" legal size document. In addition, no handwritten information is accepted and bar coded Form RP-5217-PDF will only be accepted by the County Clerk, in counties in which the RP-5217-PDF is accepted, when the form has been completed online at http://www.tax.ny.gov/pdf/current_forms/orpts/rp5217.pdf . Compliance with these requirements is necessary to record the deed being insured. For a list of counties accepting Form RP-5217-PDF go to <http://www.tax.ny.gov/research/property/assess/rp5217/index.htm>.
11. Record the termination of a lease dated 12/1/1986, made by and between Pizza Hut of America, Inc., Lessor, and Southern Tier Pizza Hut, Inc., Lessee, a memorandum of which dated 12/17/1986 was recorded on 1/12/1987 in Liber 858 Cp 840 (see post). As affected by the below:
 - A. Notice of Lease made by and between Pizza Hut of America, Inc., Lessor, and Southern Tier Pizza Hut, Inc., Lessee, dated 12/17/1986, recorded 3/23/1987 in Liber 860 Cp 659 (see post).
 - B. Notice and Assignment of Lease made by and between GE Capital Franchise Finance Corporation to Spirit Master Funding IV, LLC dated as of 12/21/2007 and recorded 1/15/2008 in Book 1198 of Deeds, Page 904 (see post).
 - C. Memorandum of Assignment of Lease made by Spirit Master Funding IV, LLC to Spirit Master Funding III, LLC dated as of 8/27/2009 and recorded 9/29/2009 in Book 1233 of Deeds, Page 186 (see post).



Title No. NCS-871769NY1-PHX1
AMENDED 10/12/2017 (msj)

SCHEDULE "B-II"
(EXCEPTIONS)

**THE POLICY WILL INCLUDE AS EXCEPTIONS TO TITLE THE FOLLOWING MATTERS UNLESS THEY ARE
DISPOSED OF TO THE SATISFACTION OF THE COMPANY:**

1. Rights of tenants or persons in possession, if any.
2. Taxes, tax liens, tax sales, water rates, sewer rents and assessments set forth herein.
3. Any state of facts which a guaranteed survey of current date would disclose.

The exact location, courses, distances and dimensions of the premises described in Schedule A are not insured without a survey thereof acceptable to this Company.
4. There (is) are one open mortgage(s) of record. (See Mortgage Schedule herein)
5. Electric Easement made by Southern Tier Pizza Hut, Inc. to New York State Electric & Gas Corporation dated 12/17/1986 and recorded 4/9/1987 in Book 861 of Deeds, Page 53 (see post).
6. Electric Easement made by Pizza Hut of America, Inc. to New York State Electric & Gas Corporation dated 2/18/1987 and recorded 4/9/1987 in Book 861 of Deeds, Page 51 (see post).
7. Electric Easement made by Pizza Hut North Haven, Inc. to New York State Electric & Gas Corporation dated 11/9/1976 and recorded 2/15/1977 in Liber 762 Cp 1002 (see post).
8. Deleted Intentionally
9. Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§499a, et seq.) or the Packers and Stockyards Act (7 U.S.C. §§181 et seq.) or under similar state laws.
10. **OMITTED 10/12/2017 (msj)** Tax search will be forwarded upon receipt. Additional exceptions may be raised on review of that search.



Title No. NCS-871769NY1-PHX1
AMENDED 10/12/2017 (msj)

SCHEDULE B-II Continued
(EXCEPTIONS)

11. **ADDED 10/12/2017 (msj)**FOR INFORMATION ONLY: The tax search indicates that current, actual water meter readings have not been entered, and/or there may have been minimum, average or estimated water meter readings. Policy does not insure against water charges and sewer rents, entered and billed subsequent to closing for periods prior to closing and interest thereon.

NOTE: A request for a final reading should be made in advance of closing from the appropriate authority.

12. **ADDED 10/12/2017 (msj)**FOR INFORMATION ONLY: The tax search reveals that the water is supplied by the municipality. In the event that water charges are not paid, they will be relevied as part of a general tax. Policy does not insure against water charges relevied to general taxes subsequent to closing for periods prior to closing.



Title No. NCS-871769NY1-PHX1

SURVEY READING



Title No. NCS-871769NY1-PHX1

MORTGAGE SCHEDULE

MORTGAGE

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING made by SPIRIT MASTER FUNDING IV, LLC to CITIBANK, N.A. in the amount of \$330,000.00 dated as of 12/21/2007, recorded 1/15/2008 in (as) Book 1975 of Mortgages, Page 419. (Mortgage Tax Paid: \$2,475.00)

The above Mortgage may be assigned and/or satisfied by:

CITIBANK, N.A.

This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.



**CONSUMER NOTICES AND DISCLOSURES AS REQUIRED
PURSUANT TO NEW YORK INSURANCE LAW:**

Date: October 26, 2017
Order/File No. NCS-871769NY1-PHX1
The Property: 812 Hamilton Street, Geneva, NY
To: (Borrower(s)) TBD

These disclosures and Notices are for the purposes of compliance with New York Insurance law and do not alter or change the coverages, exceptions, exclusions, or conditions of the final policies issued in connection with the subject transaction. Any person who knowingly, and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals, for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) and the stated value of the claim for each such violation.

THIS REPORT IS NOT A TITLE INSURANCE POLICY. PLEASE REVIEW THIS REPORT WITH A REAL ESTATE PROFESSIONAL REPRESENTING YOUR INTEREST IN THIS TRANSACTION. PLEASE READ IT CAREFULLY. THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY. YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.



**NOTICE CONCERNING AVAILABILITY OF AN
"OWNER'S" POLICY OF TITLE INSURANCE**

Please indicate that this transaction is either: a refinance_____ or, a purchase_____.

Our records indicate that you currently are seeking only a "Lender's" title insurance policy, not an "Owner's" title insurance policy.

You have the option of purchasing an Owner's insurance policy. Please read the following disclosures concerning "Lender's" and "Owner's" title insurance policies, and initial in the space provided to confirm that you have read and understand the disclosures.

_____ I/We acknowledge that the Lender's title insurance policy issued in connection with this financing provides insurance to the lender only and does not insure my/our interest in the property as the owner(s) of the property.

_____ I/We acknowledge that I/we understand that the Lender's policy insures that the lender has a valid and enforceable encumbrance on the property that I/we own or that I/we am/are purchasing. An Owner's Policy, if purchased by me/us, would insure me/us and provide me/us with an opportunity for a legal defense against claims made against the title to the property. The Owners' policy would also protect my/our equity in the property and assure the marketability of the property when I/we sell it. Without an Owners' policy I/we do not get those protections.

_____ I/We acknowledge that I/We have been given the opportunity to purchase an Owner's policy and that the website for First American Title Insurance Company title policy premium and endorsement rates is <http://facc.firstam.com/> and the Phone Number is (800) 724-0040.

I/We may obtain an Owner's Policy of Title Insurance which provides title insurance to me/us and the total premium for both policies will be \$_____.

This is an additional \$_____ above the cost of the Lender's Policy.

_____ I/We do request Owner's Policy of title insurance.

_____ I/We do not request Owner's Policy of title insurance.

TO BE SIGNED BY BUYER(S)/BORROWER(S)

Buyer/Borrower

Buyer/Borrower



FIRST AMERICAN TITLE INSURANCE

Municipality Contact Information

PARKING VIOLATIONS: A Satisfaction of Judgment must be obtained from the Parking Violations Bureau located at any of the below addresses. Said Satisfaction should then be filed with the New York County Clerk's Office located at 60 Centre Street, New York, NY and upon paying an **\$8.00** fee they will issue a Certificate of Disposition.

P.V.A. HELP CENTER DAY & HOURS: (212) 477-4430

MANHATTAN HELP CENTER: 66 John Street, 2nd Floor, New York, NY 10038

BRONX HELP CENTER: 1400 Williamsbridge Road

BROOKLYN HELP CENTER: 216 Joralemon Street

QUEENS HELP CENTER: 89-61 162nd Street

STATEN ISLAND HELP CENTER: 300 St. Marks Place

THE HELP CENTERS ARE OPEN MONDAY THROUGH FRIDAY – 8:30am to 7:00pm

NEW YORK STATE TAX COMMISSION LIENS – For information regarding disposition and payments, please write: Tax Compliance Division, P.O. Box 5149, Albany, New York 12205 or call (800) 835-3554 or (800) 452-0455.

FEDERAL TAX LIENS – For information regarding disposition and payments, please write: The Internal Revenue Services, 120 Church Street, New York, New York 10013 or at 210 East Post Road, White Plains, New York or call (800) 829-1040.

CITY OF NEW YORK LIENS – For information regarding disposition and payments, please write: The Department of Finance, Bureau of Tax Collection, 59 Maiden Lane, 24th Floor, New York, NY 10038 or call (212) 440-5400 or (212) 440-5479.

HIGHWAY DEPARTMENT (sidewalk violations) – For information regarding disposition and payments, Please write: NYC Dept. Of Transportation, 55 Water Street, New York, NY 10041 or call (212) 839-4302.

ENVIRONMENTAL CONTROL LIENS – For information regarding disposition and payments, please write: The Environmental Control Board, 66 John Street, 10th Floor, New York, NY 10038 or call (212) 560-6270.

TRANSIT ADJUDICATION LIENS – For information regarding disposition and payments, please write: 29 Gallatin Place, 3rd Floor (Bet. Fulton & Livingston St's.) Brooklyn, NY 11201 or call (347) 643-5805.

NEW YORK STATE INDUSTRIAL COMMISSIONER – For information regarding disposition and payments, please write: N.Y.S. Department of Labor, Building 12, State Campus, Room 509, Albany, NY 12240 or call (518) 457-5789 or (518) 457-0390.

INTEREST CLERK – For interest on all outstanding taxes in the City of New York or questions regarding In-Rem, please write: The City of New York, Department of Finance Adams Street, 345 Adams Street, 5th Floor, Brooklyn, NY 11201 or call (718) 935-6153.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.

In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

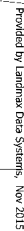
Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

MAP DATE: 1/1/00

ONTARIO COUNTY CLERK'S OFFICE
CLERK'S RECORDING PAGE

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Return To:

KUTAK ROCK LLP
1801 CALIFORNIA ST #3100
DENVER CO 80202

SPIRIT MASTER FUNDING IV LLC
SPIRIT MASTER FUNDING III LLC

Index DEED BOOK

Book 01233 Page 0179

No. Pages 0007

Instrument DEED

Date : 9/29/2009

Time : 11:13:57

Control # 200909290042

IN # IN 2009 012396

T/T # TX 2010 000545

Employee ID COUNTER31C

RECORDING	\$	56.00
SURCHARGE	\$	4.75
SURCHARGE	\$	14.25
RP-5217-T	\$	241.00
RP-5217-C	\$	9.00
TRANS TAX	\$	260.00
TP-584	\$	5.00
	\$	.00
	\$	.00

Total: \$ 590.00

STATE OF NEW YORK
ONTARIO COUNTY CLERK'S OFFICE

THIS SHEET CONSTITUTES THE CLERK'S ENDORSE-
MENT REQUIRED BY SECTION 316-A (5) AND
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. ** DO NOT DETACH **

JOHN H. COOLEY
COUNTY CLERK

TRANSFER TAX

TRANSFER AMT \$ 65,000.00

TRANSFER TAX \$ 260.00



200909290042

(9)

This instrument prepared by:

Kelly G. Reynoldson, Esq.
Kutak Rock LLP
1801 California Street, #3100
Denver, CO 80202
303-297-2400

When recorded, return to:

Kelly G. Reynoldson, Esq.
Kutak Rock LLP
1801 California Street, #3100
Denver, CO 80202

WARRANTY DEED

THIS WARRANTY DEED, made effective as of the 27th day of August, 2009, by and between **SPIRIT MASTER FUNDING IV, LLC**, a Delaware limited liability company hereinafter called the ("Grantor"), having its principal place of business at 14631 N. Scottsdale Rd., #200, Scottsdale, Arizona 85254 and **SPIRIT MASTER FUNDING III, LLC**, a Delaware limited liability company hereinafter called ("Grantee"), having its principal place of business at 14631 N. Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711.

WITNESSETH:

THAT FOR AND IN TOTAL CONSIDERATION of Ten and 00/100 Dollars (\$10.00), cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Grantor has bargained and sold and does hereby grant, sell and convey unto the Grantee, its successors and assigns forever, that certain real property legally described on the attached Exhibit A (the "Property"), SUBJECT in all respects to all liens, mortgages and encumbrances of record.

Being in all respects the same property conveyed the Grantor by Deed dated December 21, 2007, and recorded on January 15, 2008, at Document No. 200801150192 in Deed Book 01198, Page 0898, of the Ontario County Clerk's Records, New York.

TO HAVE AND TO HOLD the Property together with all privileges thereunto belonging unto the Grantee, its successors and assigns forever.

Grantor hereby binds itself, its successors and assigns, to warrant and forever defend all and singular the Property unto Grantee, its successors and assigns, including the homestead exemption and all other exemptions allowed by law, against any person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor.

Grantee, by its acceptance hereof, specifically acknowledges and assumes all obligations pursuant to that certain Mortgage, Assignment of Rents and Leases, Security Agreement and

Fixture Filing dated as of December 21, 2007 by Grantor for the benefit of Citibank, N.A. as collateral agent and recorded January 15, 2008 at Document No. 200801150194, Book 01975, Page 0419 in the Real Property Records of Ontario County, New York.

This deed is subject to the trust provision of Section 13 of the Lien Law.

IN WITNESS WHEREOF, the said Grantor, hereunto set its hand, this ____ day of August, in the year 2009.

SPIRIT MASTER FUNDING IV, LLC, a
Delaware limited liability company

By: _____

Name: Michael T. Bennett

Its: Senior Vice President

Signed, sealed and delivered in our presence:

Name: JOHN G. BARRETT

Name: Michael J. Zieg

STATE OF ARIZONA]
] SS.
COUNTY OF MARICOPA]

On the 26th day of August in the year 2009 before me, the undersigned, personally appeared Michael T. Bennett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of Maricopa, State of Arizona.



Printed Name Hedy Nelson, Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Property Address: 812 Hamilton St., Geneva, NY 14456

Legal Description:

812 HAMILTON ROAD, GENEVA, NY

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD, ALSO KNOWN AS THE OLD BUFFALO AND ALBANY TURNPIKE, U.S. ROUTE 20 AND N.Y.S. ROUTE 5, SAID POINT BEING 219.16 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD WITH THE EASTERLY LINE OF TREMONT STREET.

THENCE N16°21'00"E A DISTANCE OF 250.00 FEET;

THENCE S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 27.00 FEET TO THE NORTHWEST CORNER OF FFCA ACQUISITION CORPORATION BY DEED RECORDED IN LIBER 984 OF DEEDS AT PAGE 672;

THENCE CONTINUING S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 123.00 FEET TO THE NORTHWESTERLY CORNER OF MOSIER ENTERPRISES, INCORPORATED BY DEED RECORDED IN LIBER 819 OF DEEDS AT PAGE 960;

THENCE S16°21'00"W ALONG THE WESTERLY LINE OF SAID MOSIER ENTERPRISES, INCORPORATED A DISTANCE OF 250.00 FEET TO THE NORTHERLY LINE OF HAMILTON ROAD;

THENCE N73°39'00"W ALONG THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 150.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SAID PROPERTY MAY ALSO BE DESCRIBED AS FOLLOWS:

Parcel 1

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Geneva, County of Ontario and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and Beginning at a point in the northerly line of the said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette, Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway.

Thence (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less, to a point;

Thence (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

Thence (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton street;

Then (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point of beginning.

EXCEPT beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 369 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.00 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of Mosier Enterprises, Inc. (Liber 819 page 960).

Thence, running S 16 21' W along the west line of Mosier Enterprises, Inc. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20

Thence, running N 73 39' W along the apparent north highway boundary of New York State Route 5 & U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

8-5564

AND ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE,
LYING AND BEING IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND
STATE OF NEW YORK;

PARCEL 2

Beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 219 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.20 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of FFCA Acquisition Corp. (Liber 984 Page 692).

Thence, running S 16 21' W along the west line of FFCA Acquisition Corp. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20.

Thence, running N 74 02' W along the apparent north highway boundary of New York State Route 5 and U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

ONTARIO COUNTY CLERK'S OFFICE
CLERK'S RECORDING PAGE

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Return To:

KUTAK ROCK LLP
1801 CALIFORNIA ST #3100
DENVER CO 80202

SPIRIT MASTER FUNDING IV LLC
SPIRIT MASTER FUNDING III LLC

Index DEED BOOK

Book 01233 Page 0179

No. Pages 0007

Instrument DEED

Date : 9/29/2009

Time : 11:13:57

Control # 200909290042

IN # IN 2009 012396

T/T # TX 2010 000545

Employee ID COUNTER31C

RECORDING	\$	56.00
SURCHARGE	\$	4.75
SURCHARGE	\$	14.25
RP-5217-T	\$	241.00
RP-5217-C	\$	9.00
TRANS TAX	\$	260.00
TP-584	\$	5.00
	\$.00
	\$.00

Total: \$ 590.00

STATE OF NEW YORK
ONTARIO COUNTY CLERK'S OFFICE

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MENT REQUIRED BY SECTION 316-A (5) AND
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. ** DO NOT DETACH **

JOHN H. COOLEY
COUNTY CLERK

TRANSFER TAX

TRANSFER AMT \$ 65,000.00

TRANSFER TAX \$ 260.00



200909290042

(9)

This instrument prepared by:

Kelly G. Reynoldson, Esq.
Kutak Rock LLP
1801 California Street, #3100
Denver, CO 80202
303-297-2400

When recorded, return to:

Kelly G. Reynoldson, Esq.
Kutak Rock LLP
1801 California Street, #3100
Denver, CO 80202

WARRANTY DEED

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WITNESSETH:

THAT FOR AND IN TOTAL CONSIDERATION of Ten and 00/100 Dollars (\$10.00), cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Grantor has bargained and sold and does hereby grant, sell and convey unto the Grantee, its successors and assigns forever, that certain real property legally described on the attached Exhibit A (the "Property"), SUBJECT in all respects to all liens, mortgages and encumbrances of record.

Being in all respects the same property conveyed the Grantor by Deed dated December 21, 2007, and recorded on January 15, 2008, at Document No. 200801150192 in Deed Book 01198, Page 0898, of the Ontario County Clerk's Records, New York.

TO HAVE AND TO HOLD the Property together with all privileges thereunto belonging unto the Grantee, its successors and assigns forever.

Grantor hereby binds itself, its successors and assigns, to warrant and forever defend all and singular the Property unto Grantee, its successors and assigns, including the homestead exemption and all other exemptions allowed by law, against any person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor.

Grantee, by its acceptance hereof, specifically acknowledges and assumes all obligations pursuant to that certain Mortgage, Assignment of Rents and Leases, Security Agreement and

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This deed is subject to the trust provision of Section 13 of the Lien Law.

IN WITNESS WHEREOF, the said Grantor, hereunto set its hand, this ____ day of August, in the year 2009.

SPIRIT MASTER FUNDING IV, LLC, a
Delaware limited liability company

By: _____

Name: Michael T. Bennett

Its: Senior Vice President

Signed, sealed and delivered in our presence:

Name: JOHN G. BARRETT

Name: Michael J. Zieg

STATE OF ARIZONA]
] SS.
COUNTY OF MARICOPA]

On the 26th day of August in the year 2009 before me, the undersigned, personally appeared Michael T. Bennett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of Maricopa, State of Arizona.



Printed Name Hedy Nelson, Notary Public

EXHIBIT A

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ONTARIO COUNTY CLERK'S OFFICE
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KUTAK ROCK LLP
1801 CALIFORNIA ST #3100
DENVER CO 80202

Index DEED BOOK

Book 01233 Page 0186

No. Pages 0008

Instrument MEMORANDUM

Date : 9/29/2009

Time : 11:13:58

Control # 200909290045

IN # IN 2009 012397

T/T # TX 2010 000546

Employee ID COUNTER3/C

SPIRIT MASTER FUNDING IV LLC
SPIRIT MASTER FUNDING III LLC

RECORDING	\$	61.00
SURCHARGE	\$	4.75
SURCHARGE	\$	14.25
TP-584	\$	5.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	85.00

STATE OF NEW YORK
ONTARIO COUNTY CLERK'S OFFICE

THIS SHEET CONSTITUTES THE CLERK'S ENDORSE-
MENT REQUIRED BY SECTION 316-A (5) AND
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. ** DO NOT DETACH **

JOHN H. COOLEY
COUNTY CLERK



200909290045

(5)

9 MEM
Recording requested by and
when recorded return to:

Kutak Rock LLP
1801 California Street, Suite 3100
Denver, CO 80202
Attention: Kelly G. Reynoldson

MEMORANDUM OF ASSIGNMENT OF LEASE

THIS MEMORANDUM OF ASSIGNMENT OF LEASE (this "Memorandum") is made effective as of August 27, 2009 (the "Effective Date"), by and between **SPIRIT MASTER FUNDING IV, LLC**, a Delaware limited liability company, with an address of 14631 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711 ("Assignor"), and **SPIRIT MASTER FUNDING III, LLC**, a Delaware limited liability company, with an address of 14631 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711 ("Assignee").

1. Assignor, as lessor, and Pizza Hut of America, Inc., a Delaware corporation, as lessee ("Lessee"), are parties to that certain Land and Building Lease Agreement dated as of July 16, 1997 (together with all amendments thereto, the "Lease"), with respect to the lease of certain real property described on Exhibit A attached hereto (individually or collectively, the "Property"). Initially capitalized terms not otherwise defined in this Memorandum shall have the meanings set forth in the Lease.

2. Pursuant to the Lease, the Property is leased to Lessee, and in connection therewith, a Notice and Assignment of Lease evidencing the Lease was recorded on January 15, 2008 as Control No. 200801150193, in Deed Book 01198, at Page 0904 in the Clerk's Office of Ontario County, State of New York.

3. Pursuant to that certain Assignment and Assumption of Lease dated as of the date hereof (the "Assignment"), by and between Assignor and Assignee, Assignor has assigned all of its right, title and interest under the Lease to Assignee, and Assignee has agreed to be bound by all of the terms and conditions under the Lease.

4. Original copies of the Assignment are in the possession of the parties hereto. The Assignment contains other terms not set forth herein but which are incorporated by reference herein for all purposes. This Memorandum is executed for the purpose of placing parties dealing with the Property on notice of the existence of the Assignment and, where appropriate, its

contents, and the parties hereto ratify and confirm all other terms of the Assignment as if fully set forth herein. Additional information concerning the terms of the Assignment can be obtained from the parties hereto at the addresses set forth above.

5. This Memorandum is intended for recording purposes only and does not modify, supersede, diminish, add to or change all or any of the terms of the Lease (except as modified by the Assignment) or the Assignment in any respect. In the event of any conflict between the provisions of this Memorandum and the provisions of the Assignment, the provisions of the Assignment shall control.

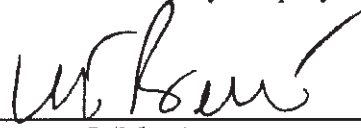
6. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

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

IN WITNESS WHEREOF, Assignor and Assignee have executed this Memorandum as of the Effective Date.

ASSIGNOR:

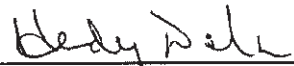
SPIRIT MASTER FUNDING IV, LLC, a
Delaware limited liability company

By: 
Name: Michael T. Bennett
Title: Senior Vice President

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

This instrument was acknowledged before me on this 26th day of August, 2009 by
Michael T. Bennett as Senior Vice President of **SPIRIT MASTER
FUNDING IV, LLC**, a Delaware limited liability company, on behalf of the company.




Notary Public

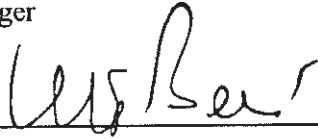
My Commission expires: 4/30/2010

ASSIGNEE:

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

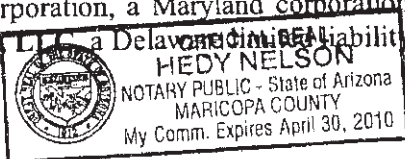
By: Spirit Finance Corporation,
a Maryland corporation, as Property Manager

By: Spirit Finance Capital Management, LLC, a
Delaware limited liability company, as
Manager

By: 
Name: Michael T. Bennett
Title: Senior Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on August 25, 2009 by Michael T. Bennett, Senior Vice President of Spirit Finance Capital Management, LLC, a Delaware limited liability company, as Manager of Spirit Finance Corporation, a Maryland corporation, as Property Manager of **SPIRIT MASTER FUNDING III LLC**, a Delaware limited liability company, on behalf of the company.




Notary Public

My Commission expires: 4/30/2010

Exhibit A

Property

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD, ALSO KNOWN AS THE OLD BUFFALO AND ALBANY TURNPIKE, U.S. ROUTE 20 AND N.Y.S. ROUTE 5, SAID POINT BEING 219.16 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD WITH THE EASTERLY LINE OF TREMONT STREET.

THENCE N16°21'00"E A DISTANCE OF 250.00 FEET;

THENCE S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 27.00 FEET TO THE NORTHWEST CORNER OF FFCA ACQUISITION CORPORATION BY DEED RECORDED IN LIBER 984 OF DEEDS AT PAGE 672;

THENCE CONTINUING S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 123.00 FEET TO THE NORTHWESTERLY CORNER OF MOSIER ENTERPRISES, INCORPORATED BY DEED RECORDED IN LIBER 819 OF DEEDS AT PAGE 960;

THENCE S16°21'00"W ALONG THE WESTERLY LINE OF SAID MOSIER ENTERPRISES, INCORPORATED A DISTANCE OF 250.00 FEET TO THE NORTHERLY LINE OF HAMILTON ROAD;

THENCE N73°39'00"W ALONG THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 150.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SAID PROPERTY MAY ALSO BE DESCRIBED AS FOLLOWS:

Parcel 1

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Geneva, County of Ontario and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and Beginning at a point in the northerly line of the said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette, Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway:

Thence (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less, to a point;

Thence (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

Thence (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton street;

Then (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point of beginning.

EXCEPT beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 369 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.00 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of Mosier Enterprises, Inc. (Liber 819 page 960).

Thence, running S 16 21' W along the west line of Mosier Enterprises, Inc. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20

Thence, running N 73 39' W along the apparent north highway boundary of New York State Route 5 & U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

AND ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE,
LYING AND BEING IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND
STATE OF NEW YORK;

PARCEL 2

Beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 219 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.20 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of FFCA Acquisition Corp. (Liber 984 Page 692).

Thence, running S 16 21' W along the west line of FFCA Acquisition Corp. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20.

Thence, running N 74 02' W along the apparent north highway boundary of New York State Route 5 and U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

Property commonly identified as 812 Hamilton Street, Geneva, New York 14456

ONTARIO COUNTY CLERK'S OFFICE
CLERK'S RECORDING PAGE

This Document has been recorded
This is NOT a bill

Return To:

LANDAMERICA FINANCIAL GROUP INC
1850 N CENTRAL AVE SUITE 300
PHOENIX AZ 85004

GE CAPITAL FRANCHISE FINANCE C
ORP
SPIRIT MASTER FUNDING IV LLC

Index DEED BOOK

Book 01198 Page 0904

No. Pages 0008

Instrument ASSIGNMENT

Date : 1/15/2008

Time : 3:06:32

Control # 200801150193

IN # IN 2008 000495

T/T # TX 2008 001903

Employee ID COUNTER3 *elc*

RECORDING	\$	30.00
RECORDING	\$	2.00
SURCHARGE	\$	4.75
SURCHARGE	\$	14.25
TP-584	\$	5.00
TRANS TAX	\$	.00
RECORDING	\$	.00
	\$	.00
	\$	.00

Total: \$ 56.00

STATE OF NEW YORK
ONTARIO COUNTY CLERK'S OFFICE

TRANSFER TAX

THIS SHEET CONSTITUTES THE CLERK'S ENDORSE-
MENT REQUIRED BY SECTION 316-A (5) AND
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. ** DO NOT DETACH **

TRANSFER AMT \$.00

TRANSFER TAX \$.00

JOHN H. COOLEY
COUNTY CLERK



200801150193

2

154
~~When recorded, return to:~~

Mr. Gregg Seibert
Spirit Master Funding IV, LLC
14631 North Scottsdale Road
Suite 200
Scottsdale, Arizona 85254-2711

When recorded mail to:
LandAmerica Financial Group, Inc.
Attn: *K. Brown*
1850 N. Central Avenue, Suite 300
Phoenix, AZ 85004
Escrow No. *07-54239*

NOTICE AND ASSIGNMENT OF LEASE

THIS NOTICE AND ASSIGNMENT OF LEASE (this "Notice") is made as of December 21, 2007, by and among **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation ("Assignor") successor by merger to Franchise Finance Corporation of America, a Maryland corporation, sole shareholder and successor by dissolution of FFCA Acquisition Corporation whose address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255, and **SPIRIT MASTER FUNDING IV, LLC**, a Delaware limited liability company ("Assignee"), whose address is 14631 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711.

WITNESSETH:

1. Pizza Hut of America, Inc., a Delaware corporation ("Pizza Hut") and V&J National Enterprises, LLC, a Wisconsin limited liability company, ("Lessee"), entered into that certain lease dated as of July 16, 1997, as assigned by Pizza Hut to Assignor pursuant to that certain Assignment and Assumption of Lease dated as of August 26, 1997, and as amended by that certain First Amendment to Lease dated as of March 26, 2007 (as amended and assigned, the "Lease") with respect to the premises, located in Geneva, Ontario County, New York, and more particularly described on Exhibit A attached hereto, together with all buildings, structures, fixtures and improvements located thereon (collectively, the "Premises").

2. A Notice of the Lease was not recorded in the Official Records of Ontario County, New York. Original copies of the Lease are in possession of the Lessee and the parties hereto.

3. Pursuant to that certain Master Assignment and Assumption of Lessor's Interest in Lease dated of even date herewith by and between Assignor and Assignee (the "Assignment"), Assignor has assigned all of its right, title and interest under the Lease to Assignee, and Assignee has agreed to be bound by all of the terms and conditions under the Lease.

4. Original copies of the Assignment are in the possession of the parties hereto. The Assignment contains other terms not herein set forth but which are incorporated by reference herein for all purposes, and this Notice is executed for the purpose of placing parties dealing with the Premises on notice of the existence of the Assignment and, where appropriate, its contents, and shall ratify and confirm all other terms of the Assignment as fully as if the same had been set forth herein. Additional information concerning the terms of the Assignment can be obtained from the parties hereto at the addresses set forth above.

5. This Notice is intended for recording purposes only, and does not modify, supersede, diminish, add to or change all or any of the terms of the Lease (except as modified by the Assignment) or the Assignment in any respect. In the event of any conflict between the provisions of this Notice and the provisions of the Assignment, the provisions of the Assignment shall control.

6. This Notice may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Notice to physically form one document.

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, this Notice is executed by each party hereto as of the date first above written.

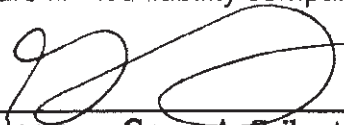
ASSIGNOR:

GE CAPITAL FRANCHISE FINANCE
CORPORATION, a Delaware corporation

By: 
Printed Name: Deborah R. Barker
Title: Vice President

ASSIGNEE:

SPIRIT MASTER FUNDING IV, LLC,
a Delaware limited liability company

By: 
Printed Name: Gregg A. Seibert
Title: Senior Vice President

STATE OF ARIZONA)
) ss.
COUNTY MARICOPA)

On this 20th day of December, 2007, before me, the undersigned, a Notary Public for the State of Arizona, personally appeared Deborah R. Barker, known to me to be the Vice President of GE Capital Franchise Finance Corporation, a Delaware corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.


Notary Public

(SEAL)

My Commission Expires: 12-03-09



STATE OF ARIZONA)
) ss.
COUNTY MARICOPA)

On this 20th day of December, 2007, before me, the undersigned, a Notary Public for the State of Arizona, personally appeared Gregg A. Seibert, known to me to be the Senior Vice President of Spirit Master Funding IV, LLC, a Delaware limited liability company that executed the within instrument and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.



Notary Public

(SEAL)

My Commission Expires:

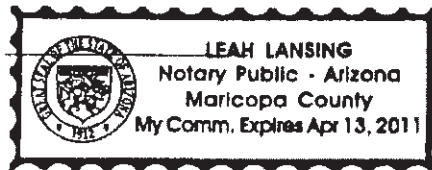


EXHIBIT "A"

PIZZA HUT

812 HAMILTON ROAD, GENEVA, NY

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD, ALSO KNOWN AS THE OLD BUFFALO AND ALBANY TURNPIKE, U.S. ROUTE 20 AND N.Y.S. ROUTE 5, SAID POINT BEING 219.16 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD WITH THE EASTERLY LINE OF TREMONT STREET.

THENCE N16°21'00"E A DISTANCE OF 250.00 FEET;

THENCE S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 27.00 FEET TO THE NORTHWEST CORNER OF FFCA ACQUISITION CORPORATION BY DEED RECORDED IN LIBER 984 OF DEEDS AT PAGE 672;

THENCE CONTINUING S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 123.00 FEET TO THE NORTHWESTERLY CORNER OF MOSIER ENTERPRISES, INCORPORATED BY DEED RECORDED IN LIBER 819 OF DEEDS AT PAGE 960;

THENCE S16°21'00"W ALONG THE WESTERLY LINE OF SAID MOSIER ENTERPRISES, INCORPORATED A DISTANCE OF 250.00 FEET TO THE NORTHERLY LINE OF HAMILTON ROAD;

THENCE N73°39'00"W ALONG THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 150.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SAID PROPERTY MAY ALSO BE DESCRIBED AS FOLLOWS:

Parcel 1

"

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Geneva, County of Ontario and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and Beginning at a point in the northerly line of the said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette, Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway.

Thence (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less, to a point;

Thence (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

Thence (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton street;

Then (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point of beginning.

EXCEPT beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 369 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.00 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of Mosier Enterprises, Inc. (Liber 819 page 960).

Thence, running S 16 21' W along the west line of Mosier Enterprises, Inc. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20.

Thence, running N 73 39' W along the apparent north highway boundary of New York State Route 5 & U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

AND ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE,
LYING AND BEING IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND
STATE OF NEW YORK;

PARCEL 2

"

Beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 219 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.20 feet to a point, said point being the northwest corner of the premises.

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Thence, running N 74 02' W along the apparent north highway boundary of New York State Route 5 and U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

Unit No. 606060
812 Hamilton Street
Geneva, New York

NOTICE OF LEASE

THIS NOTICE OF LEASE, made by and between PIZZA HUT OF AMERICA, INC., a Delaware corporation, hereinafter called "LESSOR", and SOUTHERN TIER PIZZA HUT, INC., a New York corporation, hereinafter called "LESSEE".

WITNESSETH THAT:

For and in consideration of the sum of Ten Dollars (\$10.00) and of other valuable considerations paid by LESSEE to LESSOR, the receipt and sufficiency of which are hereby acknowledged by LESSOR, LESSOR hereby demises to LESSEE, and LESSEE hereby leases from LESSOR, upon and subject to covenants and agreements set forth in a certain Lease Agreement between LESSOR and LESSEE dated the 1 day of December, 1986, the premises described in Exhibit "A" attached hereto and more commonly known as 812 Hamilton Street, Geneva, New York.

Together with all easements, rights, privileges, and appurtenances belonging to the demised premises or in anywise appertaining to or in any manner connected therewith.

And to have and to hold the same for a term of fifteen (15) years from the date set forth in said Lease Agreement.

And for said consideration, LESSOR has granted and hereby does grant unto LESSEE the right and option to extend said term for two (2) additional periods of five (5) years each, all in the manner and upon the covenants and agreements as set forth in the said Lease Agreement.

The terms, covenants, and conditions of this Lease are hereby referred to and made a part hereof as if herein set forth in full. This short form of Lease for recording is a form of the Lease for the purpose of constructive notice. In the event of conflict between the provisions of this short form of Lease for recording and the long form of this Lease, the terms and provisions of the long form of this Lease shall prevail.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals effective the 17 day of December, 1986.

The original lease was exhibited on March 3, 1987.

PIZZA HUT OF AMERICA, INC.

ATTEST:

By D. J. McClure
D. J. McClure, President

Edward C. Johnson
Edward C. Johnson, Secretary

"LESSOR"

SOUTHERN TIER PIZZA HUT, INC.

ATTEST:

By William A. Evans
William A. Evans, President

Douglas F. Duever
Douglas F. Duever, Secretary

"LESSEE"

ONTARIO COUNTY S.S.

Recorded on March 23, 1987

at 2:10 P.M., in Book 860

of Deeds Page 659

and examined by Deputy Clerk

DEANATH G. VECCHI, County Clerk

NFD/W2-3

LINER 860 PAGE 659



*1.11
Pizza Hut, Inc.
100 First St.
Wichita, KS.
67201-9869*

INER 860 PAGE 660

STATE OF KANSAS }
COUNTY OF SEDGWICK } s.s.:

BE IT REMEMBERED that on this 17 day of December, 1986, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came D. J. McCURE, President of PIZZA HUT OF AMERICA, INC., who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same as and for the duly authorized act of such corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Appointment Expires:

8/25/88

Danna E. Fowler
Danna E. Fowler, Notary Public

STATE OF New York }
COUNTY OF Chautauque } s.s.:

BE IT REMEMBERED that on this 4th day of November, 1986, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came WILLIAM A. EVANS, President of SOUTHERN TIER PIZZA HUT, INC., who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same as and for the duly authorized act of such corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Appointment Expires:

3/30/87

Jacqueline M. Heath
Jacqueline M. Heath, Notary Public

JACQUELINE M. HEATH, #4738747
Notary Public, State of New York
Qualified in Chautauque County
My Commission Expires March 30, 1987

EXHIBIT A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Geneva, County of Ontario, and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and beginning at a point in the northerly line of said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway.

THENCE (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less to a point;

THENCE (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

THENCE (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton Street;

THENCE (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point or place of BEGINNING.

LIBER 858 PAGE 840

Unit No. 606060
812 Hamilton Street
Geneva, New York

MEMORANDUM
NOTICE OF LEASE

305

THIS NOTICE OF LEASE, made by and between PIZZA HUT OF AMERICA, INC., a Delaware corporation, hereinafter called "LESSOR", and SOUTHERN TIER PIZZA HUT, INC., a New York corporation, hereinafter called "LESSEE".

WITNESSETH THAT:

For and in consideration of the sum of Ten Dollars (\$10.00) and of other valuable considerations paid by LESSEE to LESSOR, the receipt and sufficiency of which are hereby acknowledged by LESSOR, LESSOR hereby demises to LESSEE, and LESSEE hereby leases from LESSOR, upon and subject to covenants and agreements set forth in a certain Lease Agreement between LESSOR and LESSEE dated the 1 day of December, 1986, the premises described in Exhibit "A" attached hereto and more commonly known as 812 Hamilton Street, Geneva, New York.

Together with all easements, rights, privileges, and appurtenances belonging to the demised premises or in anywise appertaining to or in any manner connected therewith.

And to have and to hold the same for a term of fifteen (15) years from the date set forth in said Lease Agreement.

And for said consideration, LESSOR has granted and hereby does grant unto LESSEE the right and option to extend said term for two (2) additional periods of five (5) years each, all in the manner and upon the covenants and agreements as set forth in the said Lease Agreement.

The terms, covenants, and conditions of this Lease are hereby referred to and made a part hereof as if herein set forth in full. This short form of Lease for recording is a form of the Lease for the purpose of constructive notice. In the event of conflict between the provisions of this short form of Lease for recording and the long form of this Lease, the terms and provisions of the long form of this Lease shall prevail.

Lease was exhibited, SD 1/12/87

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals effective the 17 day of December, 1986.

PIZZA HUT OF AMERICA, INC.

ATTEST:

Edward C. Johnson
Edward C. Johnson, Secretary

By *D. J. McClure*
D. J. McClure, President

"LESSOR"

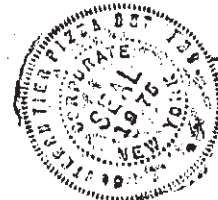
SOUTHERN TIER PIZZA HUT, INC.

ATTEST:

Douglas F. Duever
Douglas F. Duever, Secretary

By *William A. Evans*
William A. Evans, President

"LESSEE"



NFD/W2-3

*See Southern Tier Pizza Hut, Inc.
1890 & Main St.
P.O. Box 1339
Geneva, N.Y.
14702*

(K)

STATE OF KANSAS }
COUNTY OF SEDGWICK } s.s.:

BE IT REMEMBERED that on this 17 day of December, 1986, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came D. J. McCLURE, President of PIZZA HUT OF AMERICA, INC., who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same as and for the duly authorized act of such corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Appointment Expires:

8/25/88

Dianne R. Fowler
Dianne R. Fowler, Notary Public

STATE OF New York }
COUNTY OF Chautauque } s.s.:

BE IT REMEMBERED that on this 4th day of December, 1986, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came WILLIAM A. EVANS, President of SOUTHERN TIER PIZZA HUT, INC., who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same as and for the duly authorized act of such corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Appointment Expires:

3/30/87

Jacqueline M. Heath
Jacqueline M. Heath, Notary Public

My Commission Expires March 30, 87
Qualified in Chautauque County
Notary Public, State of New York
JACQUELINE M. HEATH #4738747

JACQUELINE M. HEATH, #4738747
Notary Public, State of New York
Qualified in Chautauque County
My Commission Expires March 30, 87

LIDER 858 PAGE 842

EXHIBIT A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Geneva, County of Ontario, and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and beginning at a point in the northerly line of said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway.

THENCE (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less to a point;

THENCE (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

THENCE (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton Street;

THENCE (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point or place of BEGINNING.

ONTARIO COUNTY S.S.

Recorded on Jan 12 1987at 4:35 P.M., in Book 858of Deeds Page 840and examined Antonio D. Vecchi

Antonio D. Vecchi, County Clerk

000442

LIBER 984 PAGE 692

WHEN RECORDED, PLEASE
RETURN TO:

Paul M. Lambert, Esq.
FFCA Acquisition Corporation
17207 North Perimeter Drive
Scottsdale, Arizona 85255

97-9414

ONTARIO COUNTY S.S.
Recorded on Sept 9 19 97
at 1:40 PM, in Book 984
of Deeds Page 672
and examined. [Signature]
ROBERT F. MACK, County Clerk

RECEIVED
\$ <u>980⁰⁰</u>
SEP 09 1997
STATE
TRANSFER TAX
ONTARIO COUNTY

SPECIAL WARRANTY DEED

PIZZA HUT OF AMERICA, INC., a Delaware corporation, successor by merger with Pizza Hut of North Haven, Inc., a New York corporation ("Grantor"), whose address is 14841 Dallas Parkway, Dallas, Texas 75240, GRANTS, CONVEYS, BARGAINS AND SELLS to FFCA ACQUISITION CORPORATION, a Delaware corporation, whose address is 17207 North Perimeter Drive, Scottsdale, Arizona 85255 ("Grantee") for the sum of One and 00/100 Dollars (\$1.00) and other valuable consideration, the receipt of which are hereby acknowledged, the real estate situated in Ontario County, in the State of New York, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), subject to all taxes, assessments, liens, easements, encumbrances, rights of way, restrictions of record and all matters that an accurate survey or inspection of the Property would disclose.

GRANTOR does covenant with Grantee and its assigns that Grantor will warrant and defend title to the Property against the acts of Grantor, but against none other, subject to the aforementioned matters.

Notwithstanding the foregoing paragraph, Grantor is conveying the Property to Grantee "as is" and "where is", without any representations or warranties, except the limited representations and warranties contained in Section 4.1 of that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated July 29, 1997 between Grantor and Grantee attached hereto as Exhibit B.

The undersigned person executing this deed on behalf of Grantor represents and certifies that she is the duly appointed attorney-in-fact of Grantor and has been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the Property described herein on behalf of Grantor; and that all necessary corporate action for the making of such conveyance has been taken and done.

This transfer does not constitute a conveyance of all or substantially all of the assets of Grantor.

8000-5564; 626004

(B)

GRANTOR, in compliance with Section 13 of the Lien Law, covenants that it will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
Tax Identifier Map Parcel Number:

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed, on its behalf, by Pamela R. Milner, its Attorney-in-Fact.

GRANTOR:


PIZZA HUT OF AMERICA, INC., a
Delaware corporation, successor by
merger with Pizza Hut of North Haven,
Inc., a New York corporation

By *Pamela R. Milner*

Pamela R. Milner, Attorney-in-Fact
Pursuant to Power of Attorney dated
August 15, 1997 attached hereto
and made a part hereof

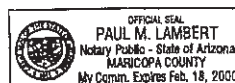
STATE OF ARIZONA)
) ss:
County of Maricopa)

On the 26 day of August, 1997, before me personally came Pamela R. Milner, to me known, who, being by me duly sworn, did depose and say that she resides in Orange County, California; that she is an Attorney-in-Fact of PIZZA HUT OF AMERICA, INC., a Delaware corporation, successor by merger with Pizza Hut of North Haven, Inc., a New York corporation, the corporation described in and which executed the above instrument; and that she was authorized by the Board of Directors of said corporation to sign her name thereto by order.


Notary Public

My Commission Expires:

2/18/00



LIBER 984 PAGE 694
EXHIBIT A

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Geneva, County of Ontario and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and Beginning at a point in the northerly line of the said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway.

Thence (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less, to a point;

Thence (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

Thence (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton Street;

Thence (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point of beginning.

626004; 8000-5564

EXHIBIT B

IV. Limited Representations; As-Is-Sale; Waivers and Indemnity**4.1 Limited Representations and Warranties by Seller; Disclaimer.**

(a) **Limited Representations of Seller.** Seller hereby represents and warrants to Buyer that:

(i) the Leases and the franchise agreements with Tenant relating to the Property are in full force and effect as of the date of this Purchase Agreement; and

(ii) other than as contained in the documents in the Buyer Package, to the best of the knowledge of Kim Grossardt, Real Estate Administrative Manager of Seller in the Wichita, Kansas office, Seller has not received any written notices of violations of any applicable laws relating to the Property from any governmental agencies or any notices of pending condemnation actions, any service of process of any legal action against Seller relating to the Property, or any written notices from Tenant of any defaults of Seller under any of the Leases.

In addition, Seller represents to Buyer that (i) Seller has been validly formed and is in good standing in the State of Delaware or any other state of formation, as applicable (ii) Seller has the requisite power and authority to enter into this Agreement and consummate the transaction contemplated herein, (iii) this Agreement is enforceable in accordance with its terms and (iv) no further consents or approvals are required for the execution of the Purchase Agreement by Seller.

(b) **Disclaimer of Other Representations.** Except for the limited representations of Seller set forth in section 4.1(a) above, Buyer agrees that neither Seller nor any other parties acting on behalf of Seller have made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, oral or written, past, present or future, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to (1) matters of title, (2) environmental matters relating to the Property or any portion thereof, (3) geological conditions, (4) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, flood plain, floodway or special flood hazard, (5) drainage, (6) soil conditions, (7) zoning to which the Property or any portion thereof may be subject, (8) the availability of any utilities to the Property or any portion thereof, (9) usages of adjoining property, (10) access to the Property or any portion thereof, (11) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (12) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (13) the existence or non-existence of underground storage tanks, (14) any other matter affecting the stability or integrity of the real Property, (15) the potential for further development of the Property, (16) the existence of vested land use, zoning or building entitlements affecting the Property, (17) the merchantability of the Property or fitness of the Property for any particular purpose, or (18) the existence, ownership or condition of any fixtures or Personal Property at the Property.

Correction
FORM 583 1/4 N. Y. DEED—WARRANTY with Lien Covenant

LIBER 819 PAGE 960

TUTTLEMAN REGISTERED U. S. PAT. OFFICE
TUTTLE LAW PRINT. PUBLISHERS, BUTLAND, VT 05701

This Indenture,

Made the 9th day of February Nineteen Hundred and Eighty-three Between

RAYMOND J. MOORE AND OLIVE M. MOORE, his wife, both now residing on Marco Island, in the State of Florida

parties of the first part, and

MOSIER ENTERPRISES, INC., Routes 5 & 20, Geneva, New York 14456

Witnesseth that the parties of the first part, in consideration of part y of the second part,
No (\$0.00) Dollar (\$0.00)
lawful money of the United States,
paid by the part y of the second part, do as hereby grant and release unto the
part y of the second part, its distributees and assigns forever, all

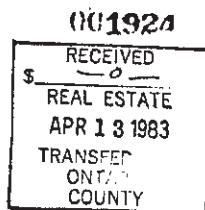
THAT TRACT OR PARCEL OF LAND situate in the Town of Geneva, County of Ontario, State of New York and being located on the northerly side of State Routes 5 & 20, sometimes known as Hamilton Street, and more particularly bounded and described as follows: Beginning at a point in the northerly line of said Routes 5 & 20 at the southwesterly corner of the premises described in a certain deed recorded in Liber 763 of Deeds at page 165 recorded in the Ontario County Clerk's Office, thence (1) in a northerly direction and along the westerly line of premises conveyed by said deed a distance of 236.47 feet more or less to the northwest corner of the premises conveyed by said deed; thence (2) in a northwesterly direction and along a portion of the lands conveyed to Brent M. Toner and Corinne J. Toner by Warranty Deed recorded in the Ontario County Clerk's Office in Liber 800 of Deeds at page 477 a distance of 48.24 feet to an iron pipe; thence (3) in a southwesterly direction and along a straight line to the northeast corner of the premises conveyed to Pizza Hut of North Haven, Inc. by warranty deed recorded in the Ontario County Clerk's Office in Liber 757 of Deeds at page 218; thence (4) in a southerly direction and along the easterly line of premises conveyed as aforesaid to Pizza Hut of North Haven, Inc. a distance of 250 feet to a point in the northerly line of said state routes; thence (5) in an easterly direction and along the northerly line of said state routes a distance of 113.38 feet more or less to the point or place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND situate in the State, Town and County aforesaid and commencing at the northwest corner of the premises conveyed to said Toners and which is marked by an iron pipe and which is also a point in the southerly line of lands now or formerly of William J. McDonald and Elizabeth McDonald as the same are described in a certain deed recorded in the Ontario County Clerk's Office in Liber 651 of Deeds at page 122 thence (1) in a westerly direction and along the southerly line of said McDonalds which is also a portion of the northerly line of lands of parties of the first part a distance of 40 feet to a point; thence (2) in a southerly direction and along a line parallel to the westerly line of the lands of said Toners a distance of 150 feet to a point; thence (3) in an easterly direction along a line parallel to course (1) a distance of 40 feet to an iron pipe in the westerly line of lands of said Toners, thence (4) in a northerly direction along the westerly line of lands of Toners a distance of 150 feet to the point of place of beginning.

This is a correction deed given to correctly set out the name of the party of the Second Part.

Tax Account No.:

ax Mailing Address:



ONTARIO COUNTY, S.S.
Recorded on the 13 day of April 1983
at 11:50 o'clock P.M., in Book 819
of Deeds at page 960
and examined.
Walter D. Vanki Clerk

Together with the appurtenances and all the estate and rights of the parties of the first part in and to said premises,
 To have and to hold the premises herein granted unto the party of the second part, its distributees and assigns forever.

And said parties of the first part

covenant as follows:

First, That the party of the second part shall quietly enjoy the said premises;

Second, That said parties of the first part

will forever warrant the title to said premises.

Third, That, in Compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Witness Whereof, the parties of the first part have hereunto set their hand and seal, the day and year first above written.

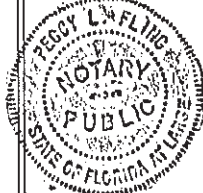
In Presence of

Raymond J. Moore
 RAYMOND J. MOORE

Olive M. Moore
 OLIVE M. MOORE

State of ~~NEW YORK~~ FLORIDA } On this 9th day of February
 County of COLLIER } Nineteen Hundred and Eighty Three
 before me, the subscriber, personally appeared Raymond J. Moore and
 Olive M. Moore, his wife

to me personally known and known to me to be the same persons described in and who executed the within Instrument, and they duly acknowledged to me that they executed the same.



Peggy LaFling
 Notary Public

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
 MY COMMISSION EXPIRES JUNE 8, 1984

Correction
DEED
 WARRANTY WITH LIEN COVENANT

RAYMOND J. MOORE
 and
 OLIVE M. MOORE
 TO

MOSTER ENTERPRISES, INC.

Dated, 817/905 19 83

LIFE 819 PAGE 961

Mail to: ANTELL & HARRIS
 ATTORNEYS AND COUNSELORS AT LAW
 SIXTH FLOOR
 19 WEST MAIN STREET
 ROCHESTER, NEW YORK 14614

0720

LIBER 762 PAGE 1002

Easement

The undersigned, hereinafter called the Grantor, being the owner of or having an interest in land situate in the Town of Geneva of Ontario County of Ontario, State of New York, fronting on the street or highway known as State Highway Route 5 & 20 and bounded Easterly by the land of Raymond Moore and Westerly by the land of Raymond Moore.

In Consideration, of \$1.00 paid by the Grantee, hereby grants and releases unto the NEW YORK STATE ELECTRIC & GAS CORPORATION, a corporation organized under the laws of the State of New York, having an office at Town of Dryden, (no street address), County of Tompkins, State of New York, herein called the Grantee, its successors and assigns, its or their lessees or licensees, the right, privilege, and authority at anytime to construct, reconstruct, extend, operate, inspect, maintain, and at its pleasure, remove a pole line with the necessary wires, cross arms, guy wires, braces and other fixtures and appurtenances used or adopted for the transmission and/or distribution of electric current and/or for telephone or telegraph communication for public or private use, upon and over said land and property and/or the highways abutting or running through said land. The easement and right of way hereby granted and released is 20 feet in width throughout its extent, situate, lying and being as follows:

The center line of said Easement and right of Way enters Grantors land on the East at a point of about 21 feet Southerly from Grantors Northerly property line; thence said center line extends in a Westerly direction across Grantors land to Grantors Westerly property line at a point of about 21 feet Southerly from Grantors Northerly property line. Together with the right to install necessary guying facilities on Grantors land and service wires to Grantors building.

Together with the right to trim, cut, and remove trees and brush to the extent necessary to clear said wires and pole line by 10 feet.

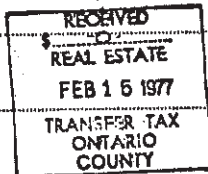
Provided, however, that any damage (other than for trimming, cutting, or removing trees, as above provided) to the property of the Grantor, caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

Reserving, however, to the Grantor the right to cultivate the ground between said poles and supporting structures and beneath said wires and fixtures and the right to cross and recross said easement and right of way provided that such use of said ground shall not interfere with, obstruct or endanger any rights granted as aforesaid and shall not disturb the grade of said ground as it now exists, and provided that no structure shall be erected, and no excavating, mining or blasting shall be undertaken within the limits of the right of way without written consent of the Grantee. Grantor is said use of said ground shall maintain a clearance of 10 feet or more from Grantee's aerial wires with equipment or otherwise.

In Witness Whereof, the Grantor, has hereunto set his hand and seal this 14th day of November, 1976.

In Presence of:

Lincoln S. Schreier
Brenda J. Butler



PIZZA HUT NORTH HAVEN, INC.

Robert E. Cressler (L.S.)
 Robert E. Cressler, President

Address: 119 Douglas, Wichita, KS

Ronald D. Watson (L.S.)
 Ronald D. Watson, Asst. Secy

Address: 914 S. Holyoke, Wichita, KS

Address: (L.S.)

Address: (L.S.)

RW-34-75

(E)

NEW YORK STATE ELECTRIC & GAS CORP.-ITHACA DOCUMENT FILE GENERAL RWC-12

Easement

Line 62-74
Auth. 43057-900 Parcel No. 4-27
J-4376-2493
Construction W. O. No. 42-70

PIZZA HUT NORTH HAVEN, INC.
1847

1714 to
NEW YORK STATE ELECTRIC
& GAS CORPORATION

Dated NOVEMBER 4, 1976

LIBER 762 PAGE 1003

State of New York
County of Ontario

Recorded on the 15 day of
February, 1977
at 11:20 o'clock A M
In Book 762 of Deeds at
Page 1002 and examined.

Sharon L. Hall, Deputy
(Clerk)

(Personal Acknowledgment)

State of New York
County of

On this 15 day of February, 1977, before me, the subscriber, personally appeared

to me personally known and known to me to be the same person described in and who executed the within instrument and duly acknowledged to me the execution of the same.

(Notary Public)

REMARKS

FEB 10 1977

Paid from Working Fund
Ct. No. Amt. Date
Ct. No. Amt. Date

(Subscribing Witness Acknowledgment)

State of New York
County of

On this 15 day of February, 1977, before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who being by me duly sworn, did depose and say that he resides at

in the County of
of that he knew

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same;
and that he, said witness, at the same time, subscribed his name as witness thereto.

(Notary Public)

(Corporate Acknowledgment With Seal)

State of KANSAS
County of SEDGWICK

On this 15 day of November, 1976, before me came Robert E. Cressler

to me personally known, who being by me duly sworn, did depose and say that he resides at #19 Douglas, Wichita, KS

in the County of
of Sedgwick
and that he is President

of Pizza Hut of North Haven, Inc.
the corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such Corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Charlie E. Schumacher
(Notary Public)



RETURN TO
CORPORATE DOCUMENT DEPARTMENT
NEW YORK STATE ELECTRIC & GAS CORP.
POST OFFICE BOX 287
ITHACA, NEW YORK 14850

Easement

3600

The undersigned, hereinafter called the Grantor(s), being the owner of or having an interest in land situate in the TOWN of GENEVA County of ONTARIO State of New York, fronting on the street or highway known as N.Y. STATE ROUTE #5 & U.S. ROUTE #20 and bounded WESTERLY by the land of RAYMOND J. MOORE and EASTERLY by the land of MOSIER ENTERPRISES, INC.

In Consideration, of \$1.00 paid by the Grantee, hereby grants and releases unto the NEW YORK STATE ELECTRIC & GAS CORPORATION, a corporation organized under the laws of the State of New York, having an office at Town of Dryden, (no street address), County of Tompkins, State of New York, herein called the Grantee, its successors and assigns, its or their lessees or licensees, the right, privilege, and authority at anytime to construct, reconstruct, extend, operate, inspect, maintain, and at its pleasure, remove a pole line with the necessary wires, cross arms, guy wires, braces and other fixtures and appurtenances used or adopted for the transmission and/or distribution of electric current and/or for telephone or telegraph communication for public or private use, upon and over said land and property and/or the highways abutting or running through said land. The easement and right of way hereby granted and released is ---20--- feet in width throughout its extent, situate, lying and being as follows:

The center line of said easement and right of way enters Grantor(s) lands on the West at a point of about 50 feet Northerly from the center of N.Y. State Route #5 & U.S. Route #20; thence said center line extends across Grantor(s) lands in an Easterly direction, along and adjacent to the Northerly side of said N.Y. State Route #5 & U.S. Route #20, to Grantor(s) Easterly property line at a point of about 50 feet Northerly from the center of said N.Y. State Route #5 & U.S. Route #20.

Together with free ingress and egress for all the above purposes including the right now and from time to time to trim, cut, burn and remove by manual, mechanical or chemical means trees, brush and other obstructions within said easement and right of way.

Provided, however, that any damage (other than for trimming, cutting, or removing trees, as above provided) to the property of the Grantor(s), caused by the Grantor in constructing or repairing said line, shall be borne by the Grantee.

Reserving, however, to the Grantor(s) the right to cultivate the ground between said poles and supporting structures and beneath said wires and fixtures and the right to cross and recross said easement and right of way provided that such use of said ground shall not interfere with, obstruct or endanger any rights granted as aforesaid and shall not disturb the grade of said ground as it now exists, and provided that no structure shall be erected, and no excavating, mining or blasting shall be undertaken within the limits of the right of way without written consent of the Grantee. Grantor(s) in said use of said ground shall maintain a clearance of 10 feet or more from Grantee's aerial wires with equipment or otherwise.

In Witness Whereof, the Grantor has hereunto set hand and seal this 18th day of February, 1987.

In Presence of:

PIZZA HUT OF AMERICA, INC.
PIZZA HUT OF NORTH HAVEN, INC.

ATTEST:

Edward C. Johnson
Edward C. Johnson, Secretary

BY: *D. J. McClure* (L.S.)
D. J. McClure, President
Address: 9111 East Douglas
Wichita, KS 67207

Address: (L.S.)

Address: (L.S.)

Address: (L.S.)

Address: (L.S.)



(D)

NEW YORK STATE ELECTRIC & GAS CORP.-ITHACA DOCUMENT FILE

CANEVA

RWC-12

Easement

Line GR-74
 Auth. 42057-900 Parcel No. 4-27-1
 Area cost center number 42-70
 Construction N. O. No. 42326-1

PIZZA HUT OF AMERICA, INC.

BY: D. J. McClure, President

TO

NEW YORK STATE ELECTRIC
& GAS CORPORATION

Dated February 18, 1987

State of New York
County of Seneca

Recorded on the 9 day of April, 1987

at 11:30 o'clock A. M.

In Book 861 of Deeds at

Page 57 and examined

For D. J. McClure
 (Cust)

(Personal Acknowledgment)

State of New York
 County of Seneca

On this day of 1987, before me, the subscriber, personally appeared

to me personally known and known to me to be the same person described in and who executed the within instrument and duly acknowledged to me the execution of the same.

(Notary Public)

REMARKS

Title verified by *Deed* Date *7/2/87*

Paid from Working Fund Office

CL No. Amt. Date

CK No. Amt. Date

Consideration on this Document
 is less than \$100.00

RETURN TO

APR 06 1987

CORPORATE RECORDS CENTER
 NEW YORK STATE ELECTRIC & GAS CORP.
 POST OFFICE BOX 287
 ITHACA, NEW YORK 14851

(Subscribing Witness Acknowledgment)

State of New York
 County of Seneca

On this day of 1987, before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who being by me duly sworn, did depose and say that he resides at

in the of that he knew

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw executed the same; and that he, said witness, at the same time, subscribed as cause as witness thereto.

(Notary Public)

U03790

RECEIVED

REAL ESTATE

APR 9 1987

TRANSFER TAX

ONTARIO

COUNTY

(Corporate Acknowledgment With Seal)

KANSAS
 State of ~~SENeca~~
 County of SEDGWICK

On this 18th day of February 1987, before me came D. J. McClure

to me personally known, who, being by me duly sworn, did depose and say that he resides at

14330 Donegal, Wichita, KS 67230, in the City of Wichita

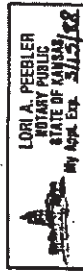
of State of Kansas

and that he is President

of Pizza Hut of America, Inc.

the corporation described in and which executed the above instrument that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Lori A. Peebler
 (Notary Public)
 Lori A. Peebler



BOOK 861 PAGE 52

Easement

3601

The Undersigned, hereinafter called the Grantor(s), being the owner of or having an interest in land situate in the TOWN of GENEVA County of ONTARIO State of New York, fronting on the street or highway known as N.Y. STATE ROUTE #5 & U.S. ROUTE #20 and bounded WESTERLY by the land of RAYMOND J. MOORE and EASTERLY by the land of MOSIER ENTERPRISES, INC.

In Consideration, of \$1.00 paid by the Grantee, hereby grants and releases unto the NEW YORK STATE ELECTRIC & GAS CORPORATION, a corporation organized under the laws of the State of New York, having an office at Town of Dryden, (no street address), County of Tompkins, State of New York, herein called the Grantee, its successors and assigns, its or their lessees or licensees, the right, privilege, and authority at anytime to construct, reconstruct, extend, operate, inspect, maintain, and at its pleasure, remove a pole line with the necessary wires, cross arms, guy wires, braces and other fixtures and appurtenances used or adopted for the transmission and/or distribution of electric current and/or for telephone or telegraph communication for public or private use, upon and over said land and property and/or the highways abutting or running through said land. The easement and right of way hereby granted and released is 20 feet in width throughout its extent, situate, lying and being as follows:

The center line of said easement and right of way enters Grantor(s) lands on the West at a point of about 50 feet Northerly from the center of N.Y. State Route #5 & U.S. ROUTE #20; thence said center line extends across Grantor(s) lands in an Easterly direction, along and adjacent to the Northerly side of said N.Y. State Route #5 & U.S. Route #20, to Grantor(s) Easterly property line at a point of about 50 feet Northerly from the center of said N.Y. State Route #5 & U.S. Route #20.

Together with free ingress and egress for all the above purposes including the right now and from time to time to trim, cut, burn and remove by manual, mechanical or chemical means trees, brush and other obstructions within said easement and right of way.

Provided, however, that any damage (other than for trimming, cutting, or removing trees, as above provided) to the property of the Grantor(s), caused by the Grantee in constructing or repairing said line, shall be borne by the Grantee.

Reserving, however, to the Grantor(s) the right to cultivate the ground between said poles and supporting structures and beneath said wires and fixtures and the right to cross and recross said easement and right of way provided that such use of said ground shall not interfere with, obstruct or endanger any rights granted as aforesaid and shall not disturb the grade of said ground as it now exists, and provided that no structure shall be erected, and no excavating, mining or blasting shall be undertaken within the limits of the right of way without written consent of the Grantee. Grantor(s) in said use of said ground shall maintain a clearance of 10 feet or more from Grantee's aerial wires with equipment or otherwise.

In Witness Whereof, the Grantor, hereunto set its hand and seal this 17th day of December, 1986

In Presence of:

SOUTHERN TIER PIZZA HUT, INC.

BY: *[Signature]* (L.S.)Address: *110 Fairwood Dr.**Lakewood, N.Y. 14750*

(L.S.)

Address:

(L.S.)

Address:

(L.S.)

Address:



(C)

NEW YORK STATE ELECTRIC & GAS CORP. ITHACA DOCUMENT FILE

Geneva RW/C 12

Easement

Line GR-74
Auth. 42057-900 Parcel No. 4-27-2
Area cont center number 42-70
Constructive W. O. No. 42326-1

SOUTHERN TIER PIZZA HUT, INC.

BY: Douglas F. Duver, Secretary/Treasurer

TO
NEW YORK STATE ELECTRIC
& GAS CORPORATION

Dated December 17, 1987

State of New York
County of Oneida

Recorded on the 9 day of Apr., 1987
at 11:30 o'clock A. M.
In Book 861 of Deeds at
Page 53 and examined

Robert D. Lundy
(Clerk)

(Personal Acknowledgment)

State of New York
County of Oneida

On this day of before me, the subscriber, personally appeared

to me personally known and known to me to be the same person described in and who executed the within instrument and duly acknowledged to me the execution of the same.

(Notary Public)

(Subscribing Witness Acknowledgment)

State of New York
County of Oneida

On this day of before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who being by me duly sworn, did depose and say that he resides at

in the that he knew

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time, subscribed his name as witness thereto.

(Notary Public)

(Corporate Acknowledgment With Seal)

State of New York
County of Oneida

On this 17th day of December, 1986, before me came Douglas F. Duver,

to me personally known, who, being by me duly sworn, did depose and say that he resides at

in the that he knew

and that he is Secretary/Treasurer of Southern Tier Pizza Hut, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

Patricia L. Lundy
(Notary Public)

PATRICIA L. LUNDY, #485,701
Notary Public, State of New York
Qualified in Oneida County
My Commission Expires Mar. 31, 1987

003791

RECEIVED
REAL ESTATE
APR 9 1987
TRANSFER TAX
ONTARIO
COUNTY

APR 06 1987

Consideration on this Document
is less than \$100.00

RETURN TO

CORPORATE RECORDS CENTER

NEW YORK STATE ELECTRIC & GAS CORP.

POST OFFICE BOX 287
ITHACA, NEW YORK 14851

ONTARIO COUNTY CLERK'S OFFICE
CLERK'S RECORDING PAGE

This Document has been recorded
This is NOT a bill

Return To:

LANDAMERICA FINANCIAL GROUP INC
1850 N CENTRAL AVE SUITE 300
PHOENIX AZ 85004

SPIRIT MASTER FUNDING IV LLC
CITIBANK NA

Index MORTGAGE BOOK

Book 01975 Page 0419

No. Pages 0027

Instrument MORTGAGE

Date : 1/15/2008

Time : 3:06:33

Control # 200801150194

M/T # MT CY 004334

IN # IN 2008 000496

Employee ID COUNTER3 *MC*

MORTGAGE TAX

RECORDING	\$	87.00	TAXABLE MORTGAGE AMT\$	330,000.00
RECORDING	\$	2.00		
SURCHARGE	\$	4.75	BASIC MORTGAGE TAX \$	1,650.00
SURCHARGE	\$	14.25		
BASIC M/TX	\$	1,650.00	SPEC ADD'L MTG TAX \$	825.00
SPECL M/TX	\$	825.00		
	\$	.00		.00
	\$	.00		
	\$	.00	Total	\$ 2,475.00
Total:	\$	2,583.00		

STATE OF NEW YORK
ONTARIO COUNTY CLERK'S OFFICE

THIS SHEET CONSTITUTES THE CLERK'S ENDORSE-
MENT REQUIRED BY SECTION 316-A (5) AND
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. ** DO NOT DETACH **

JOHN H. COOLEY
COUNTY CLERK



200801150194

(3)

26
Ontario C19

PREPARED BY AND TO BE RETURNED TO:

Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado 80202
Attn: Nathan P. Humphrey, Esq.

When recorded mail to:
LandAmerica Financial Group, Inc.
Attn: K. Bow
1850 N. Central Avenue, Suite 300
Phoenix, AZ 85004
Escrow No. 07-54239

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 21 day of December, 2007, by **SPIRIT MASTER FUNDING IV, LLC**, a Delaware limited liability company (sometimes referred to herein as "Borrower" or "Grantor"), whose address is 14631 N. Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711, to and for the benefit of **CITIBANK, N.A.**, whose address is 388 Greenwich Street, Floor 14, New York, New York 10013, in its capacity as collateral agent (referred to herein as the "Collateral Agent") for the Noteholders (as defined below) (any such Noteholders and its respective successors and assigns shall be referred to herein as the "Lender").

PRELIMINARY STATEMENT:

The capitalized terms used in this Mortgage, if not elsewhere defined in the first paragraph above or in Article I of this Mortgage shall have the meaning given such terms in the Collateral Agency Agreement. Borrower holds the fee simple interest in the Mortgaged Property, subject to the Permitted Exceptions. Borrower is executing this Mortgage for the purpose of granting all of the interest of Borrower in and to the Mortgaged Property (as defined in the Granting Clauses below) as security for the payment of the Obligations including, without limitation, repayment of all amounts due under the Note (as such Note, together with any amendments thereto, may be extended, restated or otherwise modified as provided therein). The Mortgaged Property shall be and remain subject to the lien of this Mortgage and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

THIS DOCUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING AND SHOULD BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF THE BORROWER AS DEBTOR, AND THE COLLATERAL AGENT, AS SECURED PARTY.

GRANTING CLAUSES:

Borrower, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto the Lender and to its successors and assigns WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of the Collateral Agent as agent for the Lender, and its successors and assigns, all of Borrower's estate, right, title and interest in, to and under the Land (hereinafter defined), the Improvements (hereinafter defined) and any and all of the following property (together with the Land and the Improvements, collectively the "Mortgaged Property"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Mortgaged Property, Rents and Derivative Interests

All rents, issues, profits, royalties, income and other benefits derived by Borrower from the property comprising the Mortgaged Property and the Personal Property (as defined below) or any portion thereof and any and all lump-sum payments made in connection with the early termination of any Lease (collectively, the "Rents"); all leases or subleases covering the Mortgaged Property and the Personal Property or any portion thereof now or hereafter existing or entered into (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Mortgaged Property and the Personal Property or any portion thereof or interest therein, and any greater estate in the Mortgaged Property; all interests, estate or other claims, both in law and in equity, with respect to the Mortgaged Property and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Mortgaged Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Mortgaged Property;

Personal Property

All tangible personal property owned by the Borrower and now or at any time hereafter located on or at the Mortgaged Property or used in connection therewith, including, without limitation, all machinery, appliances, furniture, equipment and inventory (the "Personal Property"), but excluding any Personal Property owned by the Lessee under any Lease other than as pledged as security under such Lease;

Intangibles

All existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, franchise, license and/or area development agreements, distributor agreements, indemnity agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Mortgaged Property or any portion thereof, whether now existing or entered into or obtained after the date hereof, all existing and future names under or by which the property comprising the Mortgaged Property and the Personal Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Mortgaged Property or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Mortgaged Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Mortgaged Property or any portion thereof with respect to Hazardous Materials or USTs, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

4810-4270-3874.1

Spiriv/GEIX

812 Hamilton Road, Geneva, NY 14456

6452/02-1014

The Mortgaged Property shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Mortgaged Property hereby granted or mortgaged or intended to be granted or mortgaged, unto Collateral Agent as agent for the Lender, and its successors and assigns, upon the terms, provisions and conditions set forth herein.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

(i) Payment of indebtedness evidenced by the Primary Note together with all extensions, renewals, amendments and modifications thereof;

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in the Loan Documents, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations under any Loan Agreement and any other Note in addition to the Primary Note contemplated in (i) above, including, without limitation all Loans and Notes issued under an Indenture from time to time.

It is the intention of the parties hereto that the Mortgaged Property shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Mortgage for all such Obligations shall be first priority and controlled by the time of proper recording of this Mortgage and shall perfect all additional amounts funded under any Loan Agreement as a future obligatory advance. In addition, this Mortgage shall also secure unpaid balances of advances made (1) under any Indenture or other Loan Agreement for payment of any fees and expenses of the Indenture Trustee or Lender otherwise in connection with the obligations of the Borrower's obligations under the Indenture or other Loan Agreement, (2) with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Mortgaged Property, together with interest thereon until paid at the Default Rate, all as contemplated in this Mortgage, (3) under the terms of the Collateral Agency Agreement, all of which shall constitute a part of the Obligations secured hereby. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Mortgaged Property subsequent to the date of recording of this Mortgage, that until this Mortgage is released, any debt owed to the Lender by Borrower, including advances and re-advances made under a Loan Agreement subsequent to the recording of this Mortgage, shall be secured with the priority afforded this Mortgage as recorded.

The Loan may not be prepaid in whole or in part except as provided under the terms of the applicable Note and/or Loan Agreement. This Mortgage secures the amount of the Primary Note, however, the value of the Trust Estate covered by this Mortgage for title insurance purposes as of the date hereof is limited to \$330,000.00

WHEREAS, THE MAXIMUM PRINCIPAL AMOUNT OF THE OBLIGATIONS SECURED BY THIS SECURITY INSTRUMENT AT EXECUTION OR WHICH MAY BE SECURED AT ANY TIME IN THE FUTURE UNDER ANY CONTINGENCY IS 100%, provided, that the foregoing limitation shall apply only to the lien upon the Mortgaged Property created by this Security Instrument, and it shall not in any manner limit, affect or impair any grant of a security interest or other right in favor of the Mortgagee under the provisions of the Loan Agreement or under any other security agreement at any time executed by Mortgagor, and further provided, that the limitation shall not limit the security of this Security Instrument with respect to interest on such obligations at the rates set forth in the Loan Agreement, sums to pay real estate taxes and insurance premiums, and attorneys' fees and costs with respect to the Mortgaged Property (as defined herein);

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Mortgaged Property is to be held and disposed of by the Collateral Agent, upon and subject to the provisions of this Mortgage and the Collateral Agency Agreement.

ARTICLE I

DEFINED TERMS

Section 1.01. *Incorporation of Other Definitions.* Capitalized terms used in this Mortgage, if not elsewhere parenthetically defined in the preamble hereto or Section 1.02 of this Mortgage, shall have the meaning given such terms in the Collateral Agency Agreement or, if no meaning is given to such terms in the Collateral Agency Agreement, in the Loan Agreement.

Section 1.02. *Definitions.* Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

"*Collateral Agency Agreement*" means the Collateral Agency Agreement, dated as of March 29, 2007, among the Collateral Agent, Spirit Finance Corporation and certain other parties, as the same may be amended, assigned or restated from time to time.

"*Event of Default*" has the meaning set forth in Section 6.01.

"*Improvements*" means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

"*Indemnified Parties*" means the Lender (and any agent of the Lender and the Collateral Agent) (and after the date of any Notice of Assignment (as defined in the Collateral Agency Agreement) delivered pursuant to the Collateral Agency Agreement, the Indenture Trustee, if any, and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Collateral Agent's or the Lender's assets and business).

"*Indenture*" means, collectively, one or more base indentures between Borrower and an Indenture Trustee, and including any supplemental indentures thereto, evidencing a Loan for the benefit of the Lender.

"*Indenture Trustee*" means an indenture trustee serving in such capacity under the terms of an Indenture.

"*Land*" means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances therewith.

"*Lease*" and "*Leases*" have the meaning set forth in the Granting Clause.

"*Loan*" means, collectively, the loans evidenced by the Primary Note and together with the loans made from time to time by a Lender to Borrower under the terms of a Loan Agreement and which are evidenced by a Note and secured by this Mortgage under the terms of any cross-collateralization provisions in such Loan Agreement.

"*Loan Agreement*" means, the Amended and Restated Master Loan Agreement dated August 1, 2007 between Spirit Master Funding IV, LLC and Spirit SPE Warehouse Funding, LLC, as amended and/or restated from time to time and, after the date of any Notice of Assignment delivered pursuant to the Collateral Agency Agreement, and any and all Indentures between the Grantor and an Indenture Trustee for the benefit of the Lender, pursuant to

which the Indenture Lender has agreed to make loans and/or loan advances to Grantor for the financing by Grantor of the Trust Estate and other commercial real estate owned by Grantor identified in any Loan Agreement secured hereby, including, without limitation, after the date of such Notice of Assignment (i) certain loans and loan agreements entered into from time to time by and between the Grantor, as borrower, and an affiliate of Grantor (or such affiliate's predecessor holder of such loans), as Lender, and (ii) certain loan notes and loan advances made from time to time and issued by Grantor under one or more Indentures.

"*Loan Documents*" means the Loan Agreement, Primary Note, this Mortgage and any other document or instrument evidencing or securing the Primary Note.

"*Losses*" has the meaning set forth in Section 7.09.

"*Mortgaged Property*" has the meaning set forth in the Granting Clause.

"*Net Award*" has the meaning set forth in Section 4.01(b)(v).

"*Net Insurance Proceeds*" has the meaning set forth in Section 4.01(a)(iii).

"*Note*" means, collectively, the Primary Note and all other promissory notes issued from time to time and delivered by Borrower to or for the benefit of the Lender or its designee pursuant to a Loan Agreement and evidencing the Obligations secured by this Mortgage, and any amendments, extensions or modifications thereof.

"*Noteholder*" has the meaning set forth in the Collateral Agency Agreement.

"*Notices*" has the meaning set forth in Section 7.04.

"*Obligations*" has the meaning set forth in the Granting Clauses.

"*Outstanding Obligations*" means the sum of the outstanding principal balance of the Note and any other amounts due under the Obligations secured under this Mortgage, all accrued but unpaid interest on the Note, all other sums due under any Note, Loan Agreement and Indenture, all sums advanced by Collateral Agent under this Mortgage and all other sums due and payable under this Mortgage and the other Loan Documents corresponding to the Mortgaged Property.

"*Partial Taking*" has the meaning set forth in Section 4.01(b)(ii).

"*Personal Property*" has the meaning set forth in the Granting Clause.

"*Primary Note*" means the Master Note as defined in the Loan Agreement, as the same may be amended, assigned, restated, consolidated, extended or otherwise modified from time to time.

"*Prohibited Transaction*" has the meaning set forth in Section 3.08.

"*Recordable Documents*" has the meaning set forth in Section 3.01.

"*Rents*" has the meaning set forth in the Granting Clause.

"*Restoration*" means the restoration, replacement or rebuilding of the Mortgaged Property, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

"*State*" means the State in which the Land is located.

"*Taking*" has the meaning set forth in Section 4.01(b)(i).

"Total Taking" has the meaning set forth in Section 4.01(b)(ii).

"UCC" has the meaning set forth in Section 6.02(iii).

ARTICLE II

INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

The representations, warranties and covenants of Borrower set forth in any Note, Loan Agreement and Indenture are incorporated by reference into this Mortgage as if stated in full in this Mortgage. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Mortgage and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Mortgage.

ARTICLE III

COVENANTS OF BORROWER

In addition to any covenants of Borrower set forth in any Note, Loan Agreement, Indenture or any other Loan Document, Borrower hereby covenants to Collateral Agent and agrees as follows until the Obligations are satisfied in full:

Section 3.01. **Recording.** Borrower shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Collateral Agent may request to cause this Mortgage, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Mortgaged Property and to publish notice of and protect the validity of the Recordable Documents. Borrower shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) requested by Collateral Agent for carrying out the intention of, or facilitating the performance of, this Mortgage. Collateral Agent shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Borrower to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Collateral Agent shall not exercise such power of attorney unless Borrower has first failed to comply with this Section, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Borrower shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

Section 3.02. **Use; Maintenance and Repair; Leases.** The Mortgaged Property shall be used solely as contemplated in the Lease. Borrower shall not, and shall not permit any lessee under any Lease, to convert the Mortgaged Property to an alternative use while this Mortgage is in effect without Collateral Agent's consent, which consent shall not be unreasonably withheld. Collateral Agent may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Mortgaged Property, and (ii) whether the converted use will increase Collateral Agent's risks or decrease the value of the Mortgaged Property. Borrower shall comply with the Loan Documents in connection with any Lease and, if prohibited by the Loan Documents, shall not (i) enter into any Leases without Collateral Agent's prior written consent; (ii) modify or amend the terms of any Lease without Collateral Agent's prior written consent; (iii) grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the lessee under any Lease, without Collateral Agent's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Collateral Agent's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease

or any interest therein to any party other than Collateral Agent, without Collateral Agent's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Collateral Agent otherwise consents or elects, Borrower's title to the Mortgaged Property and the leasehold interest in the Mortgaged Property created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Collateral Agent or any other person by purchase, operation of law, foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to this Mortgage or otherwise. Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in any Lease; (ii) give prompt notice to Collateral Agent of any claim or event of default under any Lease given to or by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Collateral Agent; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

Section 3.03. *After-Acquired Property.* All right, title and interest of Borrower in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by or released to Borrower, immediately upon such acquisition or release and without any further granting by Borrower, shall become part of the Mortgaged Property and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Borrower and specifically described in the Granting Clauses hereof. Borrower shall execute and deliver to Collateral Agent any further assurances, mortgages, grants, conveyances or assignments thereof as the Collateral Agent may reasonably require to subject the same to the lien hereof.

Section 3.04. *Taxes, Assessments, Charges and Other Impositions.* (a) Borrower shall do or cause to be done everything necessary to preserve the lien hereof without expense to Collateral Agent, including, without limitation, enforcing the payment obligations of the lessee under the Lease. Borrower shall pay or cause to be paid prior to delinquency any and all taxes, assessments, water and sewer charges, and other charges now or hereafter assessed against the Mortgaged Property.

(b) Borrower may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Borrower shall provide written notice to Collateral Agent of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Mortgaged Property or any interest therein, (iii) neither the Mortgaged Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Borrower shall have deposited with Collateral Agent adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Borrower shall have furnished the security as may be required in the proceeding or as may be required by Collateral Agent to insure payment of any contested taxes.

Section 3.05. *Insurance.* Borrower shall maintain, with respect to the Mortgaged Property, at its sole expense, or cause the lessee under the Lease to maintain at such lessee's expense, the types and amounts of insurance required by the Lease.

Section 3.06. *Impound Account.* Upon the occurrence of an Event of Default under this Mortgage or any other Loan Document, Collateral Agent may require Borrower to pay to Collateral Agent sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Collateral Agent will estimate the amounts needed for such purposes and will notify Borrower to pay the same to Collateral Agent in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Mortgage. Should additional funds be required at any time, Borrower shall pay the same to Collateral Agent on demand. Borrower shall advise Collateral Agent of all taxes and insurance bills which are due and shall cooperate fully with Collateral Agent in assuring that the same are paid. Collateral Agent may deposit all impounded funds in accounts insured by any

federal or state agency and may commingle such funds with other funds and accounts of Collateral Agent. Interest or other gains from such funds, if any, shall be the sole property of Collateral Agent. If an Event of Default shall occur subsequent to Collateral Agent requiring the establishment of an impound account pursuant to this Section, Collateral Agent may apply all impounded funds against any sums due from Borrower to Collateral Agent. Collateral Agent shall give to Borrower upon request an annual accounting showing all credits and debits to and from such impounded funds received from Borrower.

Section 3.07. *Advances by the Lender or Collateral Agent.* If the Borrower fails to perform any covenant of the Borrower contained herein, the Lender or Collateral Agent may make advances to perform any of the covenants contained in this Mortgage on Borrower's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by the Lender or Collateral Agent shall be secured hereby. Borrower shall repay on demand all sums so advanced with interest thereon at the Default Rate, if any, provided for in the Loan Agreement, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Collateral Agent's election, the Lender or Collateral Agent may add the amount of such advance to the principal balance of the Primary Note secured by this Mortgage.

Section 3.08. *Negative Covenants.* Without limiting the terms and conditions of Section 5.2 of the Loan Agreement, Borrower agrees that Borrower shall not, without the prior written consent of Collateral Agent (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Mortgaged Property or any part thereof or permit the Mortgaged Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; and (b) an agreement by Borrower leasing all or any part of the Mortgaged Property (other than the Lease) or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Lease or any Rents.

Collateral Agent's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Collateral Agent shall determine in its sole discretion, including, without limitation, (i) Borrower having executed and delivered such modifications to the terms of this Mortgage and the other Loan Documents as Collateral Agent shall request, and (ii) the proposed transferee having assumed the Note, this Mortgage and the other Loan Documents (as modified pursuant to clause (i) above). Collateral Agent shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property without Collateral Agent's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Collateral Agent has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Mortgaged Property.

Section 3.09. *Priority of Loan Agreement.* In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article III, the Loan Agreement provisions shall control.

ARTICLE IV

POSSESSION, USE AND RELEASE OF THE MORTGAGED PROPERTY

Section 4.01. *Casualty or Condemnation.* Borrower, immediately upon obtaining knowledge of any casualty to any portion of the Mortgaged Property or of any proceeding or negotiation for the taking of all or any portion of the Mortgaged Property in condemnation or other eminent domain proceedings, shall notify Collateral Agent of such casualty, proceeding or negotiation. Unless Borrower is required under the Lease to restore the Mortgaged Property or pay any Proceeds (defined below) to the lessee under the Lease, any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be

applied as set forth below (the "Proceeds"). If Borrower is required under the terms of the Lease to restore the Mortgaged Property or pay any Proceeds to the lessee under the Lease, the Proceeds shall be applied as provided in the Lease. Collateral Agent may participate in any condemnation or eminent domain proceeding, and Borrower will deliver or cause to be delivered to Collateral Agent all instruments reasonably requested by Collateral Agent to permit such participation.

(a) *Casualty.* (i) In the event of any material damage to or destruction of the Mortgaged Property or any part thereof, Borrower will promptly give written notice to Collateral Agent, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Mortgaged Property shall relieve Borrower of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Mortgaged Property or any part thereof, Borrower, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed.

(iii) Proceeds received by Collateral Agent and Borrower on account of any occurrence of damage to or destruction of the Mortgaged Property or any part thereof, less the costs, fees and expenses incurred by Collateral Agent and Borrower in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Borrower, if the amount of such Net Insurance Proceeds is less than \$50,000 and applied by Borrower toward the cost of the Restoration, and (2) Collateral Agent, if the amount of such Net Insurance Proceeds is \$50,000 or greater. Provided that no Event of Default is continuing, Net Insurance Proceeds paid to Collateral Agent shall be held and disbursed by Collateral Agent, or as Collateral Agent may from time to time direct, as the Restoration progresses, to pay or reimburse Borrower for the cost of the Restoration, upon written request of Borrower accompanied by evidence, reasonably satisfactory to Collateral Agent, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Borrower's business income insurance), Borrower has deposited into an escrow satisfactory to Collateral Agent such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Collateral Agent, (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection and (ff), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Collateral Agent of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Borrower. If at the time of the damage or destruction to the Mortgaged Property or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Collateral Agent, and Collateral Agent may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Collateral Agent in its discretion shall deem proper, or to cure such Event of Default, or, in Collateral Agent's discretion, Collateral Agent may pay such Net Insurance Proceeds in whole or in part to Borrower to be applied toward the cost of the Restoration. If Collateral Agent shall receive and retain Net Insurance Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Collateral Agent and actually applied by Collateral Agent in reduction of the Obligations.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Mortgaged Property or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Collateral Agent, Borrower and those authorized to exercise such right ("Taking"), Borrower will promptly give written notice thereof to Collateral Agent, generally describing the nature and extent of such Taking. Collateral Agent shall file and prosecute on behalf of Collateral Agent and Borrower any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Collateral Agent.

(ii) In case of a Taking of the whole of the Mortgaged Property, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Mortgaged Property ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Borrower, whether or not the Proceeds, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Collateral Agent for such purpose), at its own or Lessee's cost and expense, will promptly commence and complete or cause the commencement and completion of the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Mortgaged Property as shall result in the Mortgaged Property remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Mortgaged Property by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Collateral Agent shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Borrower shall consult with Collateral Agent, its attorneys and experts, and make all reasonable efforts to cooperate with Collateral Agent in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Mortgaged Property, Borrower will, at its own or Lessee's cost and expense, promptly commence and complete or cause the commencement and completion of the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Collateral Agent and Borrower in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received by Collateral Agent or Borrower on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Collateral Agent an amount up to the Outstanding Obligations, as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Collateral Agent under this Mortgage, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note and other sums due under this Mortgage. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the Outstanding Obligations, Borrower shall pay to Collateral Agent simultaneously with the payment of such Proceeds to Collateral Agent the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

(bb) Any remaining balance shall be paid to Borrower.

(y) Proceeds received by Collateral Agent or Borrower on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Mortgage; and

(ii) then, all or any portion of the balance of such proceeds shall, in Collateral Agent's sole discretion, either be paid to:

(1) Collateral Agent, as the holder of this Mortgage, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Loan Agreement or in the Note), as Collateral Agent shall determine; or

(2) Borrower; provided, however, in Collateral Agent's sole discretion, such proceeds shall be pledged to Collateral Agent to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Collateral Agent, or, with

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(iv) If Borrower materially fails to observe or perform any of the covenants, conditions, or obligations of this Mortgage, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note or any of the Notes made pursuant to any Loan Agreement, is not willful or intentional, does not place any rights or interest in collateral of Collateral Agent in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Collateral Agent, the Indenture Trustee or Lender, as applicable, in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Collateral Agent shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Collateral Agent in its reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Collateral Agent. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(v) If there is an "Event of Default" under any Loan Agreement and all cure periods, if any, with respect thereto have expired without the Borrower curing such "Event of Default".

Section 6.02. *Remedies.* Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01. Collateral Agent may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Collateral Agent may:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as the Lender may determine. The entering upon and taking possession of the Mortgaged Property, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of Rents, the Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default;

(ii) Commence an action to foreclose this Mortgage in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;

(iii) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Personal Property or any part thereof. In the event the Lender demands or attempts to take possession of the Personal Property in the

(2) Without notice to or demand upon Borrower, make such payments and do such acts as the Lender may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(3) Require Borrower to assemble the Personal Property or any portion thereof, at the Mortgaged Property, and promptly to deliver such Personal Property to the Lender, or an agent or representative designated by it. The Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower's premises and property to exercise the Lender's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as the Lender may determine. The Lender may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Lender shall give Borrower at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Borrower at the address set forth at the beginning of this Mortgage and shall be deemed to be given as provided herein; and

(6) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC;

(iv) Exercise all of Borrower's rights and remedies under the Indemnity Agreements, including, without limitation, making demands and claims and receiving payments under the Indemnity Agreements. Borrower hereby grants the Lender a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;

(v) Apply any sums then deposited in the impound account described in Section 3.06 toward payment of the taxes, assessment and insurance premiums for the Mortgaged Property and/or as a credit on the Obligations in such priority and proportion as the Lender may determine in its sole discretion;

(vi) If held by the Lender, surrender the insurance policies maintained pursuant to Section 3.05, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as the Lender in its sole discretion shall deem proper, and in connection therewith, Borrower hereby appoints the Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for the Lender to collect such insurance premiums; and

(vii) Sell Borrower's interest in the Mortgaged Property pursuant to the power of sale herein conferred. If Collateral Agent elects to sell Borrower's interest in the Mortgaged Property by exercise of such power of sale, Collateral Agent shall notify Lender to cause such sale to be performed in the manner then required by law.

(aa) Upon receipt of notice from Collateral Agent and at the direction of Collateral Agent, Lender shall cause to be recorded, published and delivered such notices of default and notices of sale as

may then be required by law and by this Mortgage. Lender shall, only at the direction of Collateral Agent, and without demand on Borrower, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Borrower's interest in the Mortgaged Property at the time and place of sale fixed by Collateral Agent, either as a whole, or in separate lots or parcels or items as Collateral Agent shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Lender shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, with general warranty of title by Borrower, as applicable. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Lender, Borrower or Collateral Agent, may purchase at such sale. Lender or Collateral Agent may sell not only the real property but also the Personal Property and other interests which are a part of the Mortgaged Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. Lender and Collateral Agent shall not be required to take possession of any part of the Mortgaged Property or to have any of the Personal Property present at any sale of the Mortgaged Property. Lender or Collateral Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender or Collateral Agent, including the posting of notices and the conduct of sale, but in the name and on behalf of Collateral Agent. In the event any sale hereunder is not completed or is defective in the opinion of Lender or Collateral Agent, such sale shall not exhaust the power of sale hereunder, and Lender or Collateral Agent shall have the right to cause a subsequent sale or sales to be made hereunder until all of the Mortgaged Property has been lawfully sold.

(bb) As may be permitted by law, Lender or Collateral Agent shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Collateral Agent in exercising the power of sale or foreclosing this Mortgage, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Note and the amounts due and owing to Collateral Agent under this Mortgage) in such manner and order as Collateral Agent may elect, and (iii) third, the remainder, if any, shall be paid to Borrower, or to Borrower's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(cc) Lender may in the manner provided by law postpone sale of all or any portion of the Mortgaged Property.

Section 6.03. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Collateral Agent, as a matter of right and without notice to Borrower or anyone claiming under Borrower, Borrower hereby waiving any right to a hearing or notice of hearing prior to the appointment of a receiver, and without regard to any showing of insolvency, fraud or mismanagement and without regard to the then sufficiency of the security for the payment of the Obligations and without notice to Borrower and without any showing of insolvency, fraud or mismanagement on the part of the Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the income, rents, issues and profits thereof, and Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receivers appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters. To the extent permitted by applicable law, Borrower or the then-owner of the Mortgaged Property, may seek the appointment of a receiver for the Mortgaged Property upon *ex parte* application to any court of the competent jurisdiction. Such receiver shall be empowered (a) to take possession of the Mortgaged Property and any businesses conducted by Borrower thereon and any business assets used in connection therewith, (b) to exclude Borrower and Borrower's agents, servants and employees from the Mortgaged Property, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Mortgaged Property, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Mortgaged Property, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Mortgaged Property and replace such items at the expense of the receivership estate, (h) to pay all taxes and

assessments against the Mortgaged Property, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Collateral Agent advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Collateral Agent, but not in excess of the Default Rate, and (j) generally to do anything that Borrower could legally do if Borrower were in possession of the Mortgaged Property. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Collateral Agent, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. Remedies Not Exclusive. Collateral Agent shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Mortgage or under the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, Mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Collateral Agent's right to realize upon or enforce any other security now or hereafter held by Collateral Agent, it being agreed that Collateral Agent shall be entitled to enforce this Mortgage and any other security now or hereafter held by Collateral Agent in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Collateral Agent is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Collateral Agent, or to which Collateral Agent may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Collateral Agent. Collateral Agent may pursue inconsistent remedies.

The acceptance by Collateral Agent of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Collateral Agent of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Collateral Agent shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Collateral Agent thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Collateral Agent to any action or inaction of Borrower which is subject to consent or approval of Collateral Agent hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. Possession of Mortgaged Property. In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Borrower occupies the portion of the Mortgaged Property so sold, or any part thereof, Borrower shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property; and this Mortgage and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Mortgage shall be construed to constitute Collateral Agent as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Property pursuant to the powers granted herein.

Section 6.06. Waiver of Rights. Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Mortgaged Property, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period

of redemption from any sale made in collecting the Obligations. Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension, redemption or homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, state of execution, exemption from civil process, redemption, or extension of time for payment; and (ii) any right to a marshaling or assets or a sale in inverse order of alienation.

Section 6.07. *Relief From Stay.* In the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Collateral Agent shall thereupon be entitled and Borrower irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Collateral Agent as provided in the Loan Documents and Borrower hereby irrevocably waives its rights to object to such relief. In the event Borrower shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Borrower hereby agrees that no injunctive relief against Collateral Agent shall be sought under Section 105 or other provisions of the Code by Borrower or other person or entity claiming through Borrower, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. *Cash Collateral.* Borrower hereby acknowledges and agrees that in the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Mortgaged Property covered by the lien of this Mortgage, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Borrower assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Collateral Agent as that term is defined in Section 363 of the Code; and (iv) that Collateral Agent has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Collateral Agent to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Borrower under Section 546(b) of the Code.

Section 6.09. *Assignment of Rents and Leases.* (a) Borrower hereby assigns, transfers, conveys and sets over to Collateral Agent all of Borrower's estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Borrower irrevocably appoints Collateral Agent its true and lawful attorney-in-fact, at the option of Collateral Agent, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Mortgaged Property, pursuant to Borrower's rights under the Leases, to exercise any of Borrower's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Collateral Agent, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Collateral Agent for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Borrower hereby releases Collateral Agent from all liability (other than as a result of the gross negligence or willful misconduct of Collateral Agent) whatsoever for the exercise of the foregoing

power of attorney and all actions taken pursuant thereto. The consideration received by Borrower to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower. It is intended by Borrower and Collateral Agent that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Collateral Agent to the performance of any of the covenants, conditions or provisions of Borrower contained in the Leases or otherwise to impose any obligation upon Collateral Agent, and, so long as no Event of Default shall have occurred and be continuing, Borrower shall have a license, revocable upon an Event of Default, to possess and control the Mortgaged Property and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Collateral Agent's security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Mortgaged Property, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Mortgaged Property, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Mortgaged Property, execute or terminate contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed best to protect the security of this assignment, and in Collateral Agent's or Borrower's name, sue for or otherwise collect such Rents as specified in this Mortgage as the same become due and payable, including, but not limited to, Rents then due and unpaid. Collateral Agent may so sue for or otherwise collect such Rents with or without taking possession of the Mortgaged Property. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Mortgaged Property shall make its rent payable to and pay such rent to Collateral Agent (or Collateral Agent's agents) on Collateral Agent's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Collateral Agent to the costs, if any, of taking possession and control of and managing the Mortgaged Property and collecting such amounts, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Borrower with respect to the Leases and to the sums secured by this Mortgage. Collateral Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents actually received.

(d) Collateral Agent shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Collateral Agent hereunder, except to the extent of Collateral Agent's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Mortgaged Property by Collateral Agent or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Collateral Agent under applicable law or provided therein.

ARTICLE VII

MISCELLANEOUS

Section 7.01. *Satisfaction.* If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Borrower shall pay or cause to be paid all Obligations and all other sums payable by the Borrower with respect to the Obligations, then this Mortgage shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Collateral Agent agrees to execute an instrument evidencing the satisfaction of all obligations under this Mortgage and releasing this Mortgage which shall be prepared and recorded at Borrower's sole expense.

Section 7.02. *Limitation of Rights of Others.* Nothing in this Mortgage is intended or shall be construed to give to any person, other than Borrower and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Mortgage or any covenant, condition or provision herein contained.

Section 7.03. *Severability.* In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Mortgage shall be construed as if such provision had never been contained herein or therein.

Section 7.04. *Notices; Amendments; Waiver.* All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Mortgage (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) machine confirmation, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the fifth 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. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Collateral Agent: Citibank, N.A.
388 Greenwich Street, Floor 14
New York, New York 10013
Attention: Agency & Trust, Spirit
Telephone: (212) 816-5693
Telecopy: (212) 816-5527

If to Borrower: Spirit Master Funding IV, LLC
14631 N. Scottsdale Road
Suite 200
Scottsdale, Arizona 85254-2711
Attention: Catherine Long
Telephone: (480) 606-0820
Telecopy: (480) 606-0826

with a copy to: Kutak Rock LLP
1801 California Street
Suite 3100
Denver, Colorado 80202
Attention: Paul E. Belitz, Esq.
Telephone: (303) 297-2400
Telecopy: (303) 292-2277

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 Mortgage 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. Except as in this Mortgage otherwise expressly provided, (i) this Mortgage may not be modified except by an instrument in writing executed by Borrower and Collateral Agent and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. *Successors and Assigns; Successor to Collateral Agent.* All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Mortgage. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders. In the event that the Collateral Agent is replaced, substituted or removed under the terms of the Collateral Agency Agreement, the party to whom the Lender transfers such collateral agency obligations

(including, without limitation, any successor collateral agent, trustee or agent) shall automatically (and without record notice) be deemed the successor "Collateral Agent" hereunder and no amendment or assignment of this Mortgage shall be required. In addition, if the Collateral Agency Agreement is terminated in its entirety and no successor is appointed by Lender, then Lender shall be deemed the "Collateral Agent" and no assignment, notice or recorded document shall be required in connection therewith.

Section 7.06. *Headings.* The headings appearing in this Mortgage have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Mortgage.

Section 7.07. *Time of the Essence.* Time is of the essence in the performance of each and every obligation under this Mortgage.

Section 7.08. *Forum Selection; Jurisdiction; Venue; Choice of Law.* Borrower acknowledges that this Mortgage was substantially negotiated in the State, this Mortgage was delivered in the State, all payments under the Loan Documents will be delivered in the State and there are substantial contacts between the parties and the transactions contemplated herein and the State. For purposes of any action or proceeding arising out of this Mortgage, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State. Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Mortgage and the rights and remedies of Collateral Agent with respect to the Mortgaged Property, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Mortgage, this Mortgage shall be governed by the internal laws of the State, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Collateral Agent to commence any proceeding in the federal or state courts located in the State to the extent Collateral Agent deems such proceeding necessary or advisable to exercise remedies available under the Mortgage or the other Loan Documents.

Section 7.09. *Indemnification.* Borrower shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Borrower's interest in the Mortgaged Property or Borrower's failure to act in respect of matters which are or were the obligation of Borrower under the Loan Documents) caused by, incurred or resulting from Borrower's operations of, or relating in any manner to, the Mortgaged Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Borrower or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this Mortgage by Borrower, its officers, employees, agents or other persons. It is expressly understood and agreed that Borrower's obligations under this Section shall survive the expiration or earlier termination of this Mortgage for any reason.

Section 7.10. *Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.* COLLATERAL AGENT, BY ACCEPTING THIS MORTGAGE, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF COLLATERAL AGENT AND BORROWER, BORROWER'S USE OR OCCUPANCY OF THE MORTGAGED PROPERTY, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL

ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND COLLATERAL AGENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND COLLATERAL AGENT OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 7.11. *Entire Agreement.* THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.


Section 7.12. *State Specific Provisions.* State specific provisions, if any, are outlined on Exhibit B attached hereto and incorporated herein.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the day and year first above written.

BORROWER:

SPIRIT MASTER FUNDING IV, LLC, a Delaware limited liability company

By: 

Name: Gregg A. Seibert

Title: Senior Vice President - Underwriting, Assistant Secretary and Assistant Treasurer

Tax Identification No. 20-8578471

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on December 19, 2007, by Gregg A. Seibert, as Senior Vice President - Underwriting, Assistant Secretary and Assistant Treasurer of **SPIRIT MASTER FUNDING IV, LLC**, a Delaware limited liability company, on behalf of the limited liability company.


Notary Public

My Commission Expires: _____

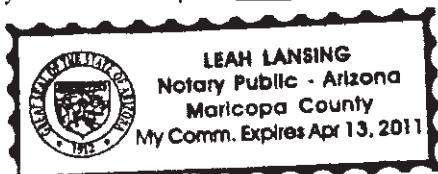


EXHIBIT "A"

PIZZA HUT

812 HAMILTON ROAD, GENEVA, NY

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD, ALSO KNOWN AS THE OLD BUFFALO AND ALBANY TURNPIKE, U.S. ROUTE 20 AND N.Y.S. ROUTE 5, SAID POINT BEING 219.16 FEET EASTERLY FROM THE INTERSECTION OF THE NORTHERLY HIGHWAY BOUNDARY OF HAMILTON ROAD WITH THE EASTERLY LINE OF TREMONT STREET.

THENCE N16°21'00"E A DISTANCE OF 250.00 FEET;

THENCE S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 27.00 FEET TO THE NORTHWEST CORNER OF FFCA ACQUISITION CORPORATION BY DEED RECORDED IN LIBER 984 OF DEEDS AT PAGE 672;

THENCE CONTINUING S73°39'00"E PARALLEL WITH THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 123.00 FEET TO THE NORTHWESTERLY CORNER OF MOSIER ENTERPRISES, INCORPORATED BY DEED RECORDED IN LIBER 819 OF DEEDS AT PAGE 960;

THENCE S16°21'00"W ALONG THE WESTERLY LINE OF SAID MOSIER ENTERPRISES, INCORPORATED A DISTANCE OF 250.00 FEET TO THE NORTHERLY LINE OF HAMILTON ROAD;

THENCE N73°39'00"W ALONG THE NORTHERLY LINE OF HAMILTON ROAD A DISTANCE OF 150.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SAID PROPERTY MAY ALSO BE DESCRIBED AS FOLLOWS:

Parcel 1

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, situate, lying and being in the Town of Geneva, County of Ontario and State of New York, situated on the north side of the street or highway formerly known as Hamilton Street and also known as the Old Buffalo and Albany Turnpike and Beginning at a point in the northerly line of the said highway or street which said point is 30 feet southerly from the point of intersection of the westerly line of the premises owned in fee by LaFayette, Inn, Inc. and the northerly line of said highway all as measured along the north line of said highway:

Thence (1) in a northerly direction and along a straight line parallel to the westerly line of the premises owned in fee by LaFayette Inn, Inc., a distance of 208 feet more or less, to a point;

Thence (2) in an easterly direction and along a line parallel to the northerly line of said highway, a distance of 150 feet to a point;

Thence (3) in a southerly direction and along a line parallel to course (1) to a point in the northerly line of said highway or street formerly known as Hamilton street;

Then (4) in a westerly direction and along said northerly line of said highway or street a distance of 150 feet to the point of beginning.

EXCEPT beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 369 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.00 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of Mosier Enterprises, Inc. (Liber 819 page 960).

Thence, running S 16 21' W along the west line of Mosier Enterprises, Inc. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20.

Thence, running N 73 39' W along the apparent north highway boundary of New York State Route 5 & U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

AND ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE,
LYING AND BEING IN THE TOWN OF GENEVA, COUNTY OF ONTARIO AND
STATE OF NEW YORK;

PARCEL 2

"

Beginning at a point on the apparent north highway boundary of New York State Route 5 & U.S. Route 20 at the southwest corner of the premises, said point being easterly along the apparent north highway boundary of said highway a distance of 219 feet more or less from the intersection of the apparent north highway boundary of said highway with the apparent east street line of Tremont Street.

Thence, running N 16 21' E along the west line of the premises to be conveyed a distance of 250.20 feet to a point, said point being the northwest corner of the premises.

Thence, running S 73 39' E along the north line of the premises a distance of 27.00 feet to a point marked by an iron pin, said point being the northwest corner of FFCA Acquisition Corp. (Liber 984 Page 692).

Thence, running S 16 21' W along the west line of FFCA Acquisition Corp. a distance of 250.00 feet to a point marked by an iron pin, said point being on the apparent north highway boundary of New York State Route 5 & U.S. Route 20.

Thence, running N 74 02' W along the apparent north highway boundary of New York State Route 5 and U.S. Route 20 a distance of 27.00 feet to the point of beginning and containing 0.155 acres of land more or less.

EXHIBIT B

STATE SPECIFIC PROVISIONS

(a) THIS MORTGAGE DOES NOT COVER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS, EACH HAVING THEIR OWN SEPARATE COOKING FACILITIES.

(b) Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is \$330,000.00 plus interest thereon, plus amounts expended by Mortgagee after a declaration of default hereunder to maintain the lien of this Mortgage or to protect the property secured by this Mortgage, including, without limitation, amounts in respect of insurance premiums, real estate taxes and litigation expenses to prosecute or defend the rights, remedies and lien of this Mortgage or title to the property secured hereby.

(c) Mortgagor will, in compliance with Section 13 of the New York Lien Law, receive the amounts secured hereby and will hold the right to receive such amounts as a trust fund to be applied first for the purpose of paying the cost of any improvements and will apply the same first to the payment of the cost of such improvements before using any part of the total of the same for any other purpose.

(d) The clauses and covenants contained herein which are construed by Section 254 of the Real Property Law of the State of New York shall, except as otherwise expressly provided herein, be construed as provided in that Section; the additional clauses and covenants contained herein shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by said Section 254 and shall not impair, modify, alter or defeat such rights notwithstanding that such additional clauses and covenants may relate to the same subject matter or provided for different or additional rights in the same or similar contingencies as the clauses and covenants construed by said Section 254; the clauses and covenants herein which are similar to those contained in said Section 254 but which afford additional rights to Mortgagee or Mortgagor shall supersede the clauses and covenants contained in Section 254. To the extent any of the provisions herein or in the Loan Documents are inconsistent with the provisions of said Section 254, the provisions hereof and of the other Loan Documents shall control.

BY EXECUTION OF THIS MORTGAGE, BORROWER EXPRESSLY: ACKNOWLEDGES THE RIGHT TO ACCELERATE THE OBLIGATION EVIDENCED BY THE NOTE AND THE POWER GIVEN HEREIN TO LENDER TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY BORROWER WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE NOTE OR PROVISIONS OF THIS MORTGAGE OR BY LAW; ACKNOWLEDGES THAT THE UNDERSIGNED HAVE READ THIS MORTGAGE AND THAT ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO BORROWER, AND BORROWER HAS CONSULTED WITH ITS COUNSEL PRIOR TO EXECUTING THIS MORTGAGE; AND ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF BORROWER HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY THE UNDERSIGNED, ON BEHALF OF BORROWER, AS PART OF A BARGAINED-FOR LOAN TRANSACTION AND THAT THIS MORTGAGE IS VALID AND ENFORCEABLE BY LENDER AGAINST BORROWER IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.