

**AGREEMENT FOR SALE AND PURCHASE OF PROPERTY**  
(Commercial Property)

SELLER: CBA 2005-1 Rock Creek REO, LLC

BUYER: \_\_\_\_\_

EXECUTION DATE: \_\_\_\_\_, 2012

PROPERTY: 3276 N. Main Street, Rock Creek, Ohio 44084

**TABLE OF CONTENTS**

<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE I	DEFINED TERMS.....	1
ARTICLE II	PURCHASE PRICE AND TERMS OF PAYMENT; CLOSING ADJUSTMENTS .....	4
ARTICLE III	CONDITION.....	7
ARTICLE IV	TITLE .....	10
ARTICLE V	ESCROW AND CLOSING .....	12
ARTICLE VI	ENVIRONMENTAL MATTERS .....	14
ARTICLE VII	WARRANTIES AND REPRESENTATIONS .....	15
ARTICLE VIII	ASSIGNMENT .....	15
ARTICLE IX	BROKERAGE .....	16
ARTICLE X	DEFAULT.....	17
ARTICLE XI	NO JOINT VENTURE .....	18
ARTICLE XII	MISCELLANEOUS.....	18
ARTICLE XIII	ESCROW TERMS .....	23
ARTICLE XIV	LITIGATION .....	24

EXHIBITS

- A LEGAL DESCRIPTION
- B TITLE COMMITMENT
- C DEED
- D AFFIDAVIT
- E BILL OF SALE
- F ASSIGNMENT AND ASSUMPTION AGREEMENT
- G NOTICE TO TENANT
- H NOTICE TO SERVICE CONTRACTOR

## AGREEMENT FOR SALE AND PURCHASE OF PROPERTY

CBA 2005-1 Rock Creek REO, LLC, an Ohio limited liability company ("**Seller**"), whose address is 10851 Mastin, Suite 700, Overland Park, KS 62210, and \_\_\_\_\_, a \_\_\_\_\_ ("**Buyer**"), whose address is \_\_\_\_\_, and whose Taxpayer Identification Number is \_\_\_\_\_, hereby agree on this \_\_\_\_ day of \_\_\_\_\_, 2012 (the "**Effective Date**"), that Seller shall sell to Buyer and Buyer shall purchase from Seller, upon the following terms and conditions and for the price herein set forth, the Property, as such term is defined in Article I of this Agreement (the "**Agreement**").

### ARTICLE I DEFINED TERMS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

- (a) "**Auctioneer**" means Tranzon Asset Advisors of Ohio, Inc.
- (b) "**Business Day**" shall mean any day on which business is conducted by national banking institutions in Ashtabula County, Ohio.
- (c) "**Closing**" shall mean the execution and delivery of the Quit Claim Deed, the Bill of Sale and the other instruments to be executed by Seller conveying the Property to Buyer and the payment by Buyer to Seller of the Purchase Price.
- (d) "**Closing Date**" shall mean March 7, 2012 at 5:00 p.m. central time.
- (e) "**County**" shall mean Ashtabula County located in the State.
- (f) "**Deed**" shall mean the Quit-Claim deed conveying fee title to the Real Property to Buyer, duly executed by Seller and acknowledged and in proper form for recordation, the form of which is attached hereto as Exhibit "B".
- (g) "**Deposit**" shall mean the amount from time to time held by the Title Company as Buyer's earnest money deposit. The Deposit shall be the sum of \_\_\_\_\_ thousand and 00/100 U.S. Dollars (\$\_\_\_\_\_,000).  
The Deposit shall be increased to the extent interest accrues thereon.
- (h) "**Due Diligence Reports**" shall mean all reports, documents, studies, analyses, and other written information delivered by Seller to Buyer or obtained by Buyer with respect to the Property, including results of physical inspections, engineering studies, engineering drawings and specifications, surveys, Hazardous Materials Reports, soil tests, site plans, feasibility studies, market studies, architectural plans, specifications and drawings, title reports, permits, approvals and authorizations (whether obtained from governmental authorities or third parties); and all other work product generated by or for Buyer in connection with the Property.

(i) "**Execution Date**" shall mean the date set forth in the first paragraph of this Agreement.

(j) "**General Intangibles**" shall mean any and all warranties, telephone exchange numbers, architectural or engineering plans and specifications, and development rights that relate to the Real Property or the Personal Property.

(k) "**Hazardous Materials**" shall mean any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics. The term "**Hazardous Materials**" includes, without limitation, any substance regulated under any and all federal, state and local statutes, laws (including case law), regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions, whether now or hereafter in effect, relating to human health, the environment or to emissions, discharges or releases of pollutants, contaminants, toxic substances, hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous materials or wastes or the clean-up or other remediation thereof.

(l) "**Hazardous Materials Reports**" shall mean any and all studies, reports, analyses, information, or other written records regarding the presence of Hazardous Materials at, on, in, under or relating to the Land.

(m) "**Intangible Property**" shall mean, to the extent the same is transferable by Seller, Seller's interest in the Leases, the Service Contracts, the Permits, the General Intangibles and any and all rights to the name of the improvements upon the Real Property.

(n) "**Land**" shall mean that certain parcel of real property located in the County and State, as more particularly described on the attached **Exhibit A**.

(o) "**Leases**" shall mean any and all leases, tenancies, licenses and other rights of occupancy or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof).

(p) "**Permits**" shall mean any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property.

(q) "**Personal Property**" shall mean all tangible personal property and fixtures owned by Seller and located on or attached to the Real Property. "**Personal Property**" does not include property owned by others such as Tenants under Leases or parties to Service Contracts.

(r) "**Property**" shall mean collectively the Real Property, the Personal Property and the Intangible Property.

(s) "**Prorations Date**" shall mean the day prior to the Closing Date.

(t) "**Purchase Price**" shall mean the high bid amount of \_\_\_\_\_ and 00/100 U.S. Dollars (\$\_\_\_\_\_) plus a 10% Buyer Premium of \_\_\_\_\_ and 00/100 U.S. Dollars (\$\_\_\_\_\_).

(u) "**Real Property**" shall mean the Land, together with Seller's interest in the buildings and other improvements and fixtures located thereon, together with all rights of ways, ingress and egress, easements, rights, privileges, hereditaments and appurtenances thereto or in any way appertaining thereto.

(v) "**Security Deposits**" shall mean the security deposits, if any, in Seller's possession with respect to the Leases and which have not been forfeited by Tenants prior to Closing. Security Deposits shall not include any security deposits, whether or not provided for in the Leases, which were paid to Seller's predecessor(s) in interest to the Property and which were not delivered to Seller and are not in Seller's possession.

(w) "**Seller Group**" shall mean Seller, and its member and manager and such member's trustee, master servicer, special servicer and certificate holders and their respective past, present, and future officers, directors, shareholders, general partners, limited partners, agents, representatives, heirs, successors, assigns and attorneys and their respective heirs, successors, and assigns.

(x) "**Service Contracts**" shall mean any and all service, maintenance, supply, operating, or employment contracts or other agreements, however termed, written or oral, affecting the use, ownership, maintenance, or operation of all or any part of the Property (but specifically excluding any Leases and any management agreements).

(y) "**State**" shall mean Ohio.

(z) "**Tenants**" shall mean those persons or entities holding rights of tenants under Leases.

(aa) "**Title Commitment**" shall mean the commitment for issuance of an owner's title insurance policy issued by the Title Company in favor of Buyer in the full amount of the Purchase Price.

(bb) "**Title Company**" shall mean Talon Title Agency of Central Ohio, Inc. at its office located at 570 Polaris Parkway, Suite 140, Westerville, OH 43082, Contact Person: Jeffrey A. Auker, Telephone: (614) 818-0500, Facsimile: (614) 818-4619, E-mail: jauker@talontitle.net.

1.2 Other Defined Terms. Other capitalized terms contained in this Agreement shall have the meanings assigned to them herein.

**ARTICLE II**  
**PURCHASE PRICE AND TERMS OF PAYMENT; CLOSING ADJUSTMENTS**

2.1 Purchase Price. The total Purchase Price shall be the Purchase Price set forth in Section 1.1 of this Agreement.

2.2 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Credit for Deposit. At the close of the auction, upon execution of this Agreement by Buyer, Buyer shall deliver to Auctioneer for prompt delivery to Escrow Agent, the Deposit. The Deposit is consideration for the rights granted to Buyer to purchase the Property and shall be non-refundable except as otherwise provided herein. Provided that Buyer has supplied Buyer's Taxpayer Identification Number on page one hereof and Buyer executes all necessary regulatory forms, the Deposit shall be held in a federally insured interest bearing deposit account. Any interest accrued thereon shall become a part of the Deposit to be applied or disposed of in the same manner as the Deposit. At the Closing, Buyer shall receive a credit against the Purchase Price in the amount of the Deposit.

(b) Payment at Closing. The balance of the Purchase Price, subject to the prorations and adjustments set forth in this Agreement, shall be paid (i) by Buyer to Seller by wire transfer to Title Company's account at the time of Closing, and (ii) by the Title Company to Seller by wire transfer to Seller's account immediately upon Closing. Buyer expressly acknowledges and agrees that, to the extent Buyer will require financing to close on this transaction, this Agreement is not subject or conditioned in any way on Buyer's ability to obtain such financing. Neither Seller nor any entity related to Seller in any way or for which Seller acts as a conduit for financing has any obligation to finance Buyer's purchase of the Property. In the event Buyer elects to submit an application for financing with any entity related to Seller and/or any entity for which Seller is acting as a conduit for financing, such financing application shall be considered independently of this transaction, and neither the submission of the application or any decision or commitment by any entity to provide financing to Buyer shall have any effect on Buyer's or Seller's rights and obligations hereunder. Wired funds must be received in the Title Company's account prior to 3:00 p.m. central time on the Closing Date.

2.3 Closing Adjustments and Prorations. Except as otherwise provided in this Section, all adjustments and prorations to the Purchase Price payable at Closing shall be computed as of the end of the Prorations Date. Such adjustments and prorations shall include the following:

(a) Revenues and Expenses. Seller shall be entitled to receive all revenues and shall be charged with all expenses relating to the ownership and operation of the Property through the Prorations Date, and to the extent any revenues for the month of Closing are not collected prior to the Prorations Date, Seller shall be entitled to a credit for same at Closing. All revenues and expenses shall be prorated as of the Prorations Date. With respect to any delinquent rents or other revenue, Buyer shall continue to invoice tenants to collect the same after the Closing. All such collections in excess of the credit to Seller at Closing shall be remitted by Buyer to Seller promptly after receipt, but in any event not later

than ten days after receipt. The foregoing shall not, however, prohibit or restrict Seller from attempting to collect in any lawful manner after the Closing any such delinquent rent or other revenue directly from the Tenant or other party owing such amounts. In any event the first monies collected from Tenants or other parties shall be applied to the rents and other revenues delinquent as of the Closing Date until the delinquency has been cured and such collections shall be remitted to Seller in accordance with the provisions hereof. The provisions of this Section shall survive the Closing.

(b) Lease Prepayments and Security Deposits. Buyer shall receive credits against the Purchase Price at Closing for (i) any Security Deposits, (ii) any other money, together with any earned interest, in Seller's actual possession for the account of Tenants, including, all rental, security, utility, key, damage, and other deposits, and (iii) any prepaid rents paid to Seller by the Tenants.

(c) Taxes and Assessments; Pending and Certified Liens. Taxes and assessments for the year of Closing shall be prorated as of the Prorations Date in accordance with the due date of the municipality or taxing unit in which the Property is located if the amount of such taxes is known at the time of Closing; if such amount cannot be then ascertained, proration shall be based upon the amount of the taxes, with the maximum discount allowed by law, if any, for the preceding year. In the event that, after the Closing Date, any of such taxes, charges or assessments shall be increased or reduced there shall not be any reapportionment post-closing. In the event Seller has commenced a tax appeal on the Property and that such appeal for the year in which the Closing occurs results in a refund or reimbursement of taxes actually paid or due, Seller and Buyer shall each be entitled to share the refund or reimbursement of taxes in an amount equal to their pro rata share of the taxes paid at the Closing, except that Buyer's share shall be reduced by the proportionate share of any expenses incurred by Seller in prosecuting the appeal. In the event that any protest or appeal of an assessment for any year prior to the year in which the Closing occurs results in a refund or reimbursement of taxes paid, the Seller shall be entitled to the full amount of such refund or reimbursement. Other assessments not included on the regular property tax bills, license fees for transferred licenses, and state or municipal fees and taxes for the Property for the applicable fiscal period during which Closing takes place shall be adjusted as of the Prorations Date on the basis of the most recent ascertainable assessments and rates, and shall not be re-prorated post-Closing.

Consistent with the above, Seller shall pay the installments of taxes due up to the date of closing, and all delinquent taxes. The subsequent taxes due shall be prorated from the date of closing and credited to Buyer at closing, subject to subsequent adjustment as set forth above.

(d) Utility Charges. Electric, water, sewer, gas, fuel, waste collection and removal and other utility and operating expenses relating to the Property shall be prorated as of the Prorations Date. It shall be assumed that the utility charges were incurred uniformly during the billing period in which the Closing occurs. If bills for the applicable period are unavailable, the amounts of such charges will be estimated based upon the latest known bills. Notwithstanding the foregoing, to the extent possible, Seller and Buyer shall request the utility companies to read the meters as of the Prorations Date, and Seller shall be

responsible for all charges incurred through the Prorations Date. All prepaid deposits for utilities shall be refunded to Seller at the time of closing by the utility companies, and it shall be Buyer's responsibility to make any utility deposits required for service.

(e) Other Prorations. In addition to the previously stated adjustments and prorations at Closing the parties shall also make such adjustments and prorations to the Purchase Price as are customary and usual in transactions similar to the transaction contemplated by this Agreement.

(f) Reproration and Post-Closing Adjustments. All prorations, adjustments and credits made and determined as herein provided shall be final as of the Closing Date, unless otherwise specified herein. This provision shall survive the Closing.

2.4 Costs and Expenses. Seller and Buyer shall each pay ½ of the Escrow Fee charged by the Title Company, if any. Seller shall pay all transfer taxes and the title insurance premium for the standard coverage owner's title insurance policy to be issued to Buyer by the Title Company **[IN OHIO, PLEASE NOTE THAT IT IS NOT UNREASONABLE TO REQUIRE THE BUYER AND SELLER TO SPLIT THE TRANSFER TAXES AND TITLE INSURANCE PREMIUM]**. Buyer shall pay all costs of recording, the cost of any extended coverage and endorsements to the title policy requested or required by Buyer and the cost of any survey obtained by Buyer. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive the Closing.

### **ARTICLE III** **CONDITION**

3.1 Information Regarding Property. Seller and Auctioneer have provided and may in the future provide to Buyer documents and information pertaining to the Property. All of such information is provided simply as an accommodation to Buyer, and Seller and Auctioneer make no representations as to their accuracy or completeness. Buyer understands that some of the foregoing documents were provided by others to Seller and Auctioneer and were not prepared by or verified by Seller and Auctioneer. In no event shall Seller or Auctioneer be obligated to deliver or make available to Buyer any of Seller's or Auctioneer's internal memoranda, attorney-client privileged materials or appraisals of the Property, if any.

3.2 Condition of the Property.

(a) Buyer hereby acknowledges that Seller and Auctioneer have provided Buyer sufficient opportunity to make such independent factual, physical and legal examinations and inquiries as Buyer deems necessary and desirable with respect to the Property and the transaction contemplated by this Agreement and that Buyer has approved the Property in all respects.

(b) Buyer does hereby acknowledge, represent, warrant and agree to and with Seller that, except as otherwise expressly provided in this Agreement: (i) Buyer is expressly purchasing the Property in its existing condition **"as is, where is, and with all faults"** and **specifically and expressly without any warranties, representations or guarantees,**

**either express or implied, of any kind, nature, or type whatsoever from or on behalf of Seller and Auctioneer** with respect to all facts, circumstances, conditions and defects; (ii) Seller and Auctioneer have no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate Buyer for same; (iii) Seller has specifically bargained for the assumption by Buyer of all responsibility to inspect and investigate the Property and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof; (iv) Buyer has undertaken all such inspections and investigations of the Property as Buyer deems necessary or appropriate under the circumstances as to the condition of the Property and the suitability of the Property for Buyer's intended use, and based upon same, Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (v) Seller and Auctioneer are not making and has not made any warranty or representation with respect to any materials or other data provided by Seller or Auctioneer to Buyer (whether prepared by or for the Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property or for any other purpose; (vi) the Property was acquired by Seller by operation of law through foreclosure or deed in lieu of foreclosure to satisfy a loan obligation and consequently Seller has little or no direct or actual knowledge concerning the physical or economic characteristics of the Property, and (vii) by reason of all the foregoing, Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property. Without limiting the generality of any of the foregoing, Buyer specifically acknowledges that Seller and Auctioneer does not represent or in any way warrant the accuracy of any marketing information or pamphlets listing or describing the Property or the information, if any, provided by Seller or Auctioneer to Buyer; and

(c) **Seller hereby disclaims all warranties of any kind or nature whatsoever (including warranties of condition, merchantability, habitability and fitness for particular purposes), whether expressed or implied, including, but not limited to warranties with respect to the Property, tax liabilities, zoning, land value, subdivision or land use, availability of access or utilities, ingress or egress, governmental approvals, or the soil conditions of the Land. Buyer further acknowledges that Buyer is buying the Property "as is" and in its present condition and that except as otherwise expressly provided in this agreement, Buyer is not relying upon any representation of any kind or nature made by Seller, Auctioneer, or any of its employees or agents or Seller group with respect to the Land or Property, and that, in fact, no such representations were made except as expressly set forth in this Agreement; and**

(d) **Further and without in any way limiting any other provision of this Agreement, Seller and Auctioneer makes no warranty with respect to the presence on or beneath the Land (or any parcel in proximity thereto) of Hazardous Materials. By acceptance of this Agreement and the Deed, Buyer acknowledges that Buyer's opportunity for inspection and investigation of such Land (and other parcels in**

proximity thereto) has been adequate to enable Buyer to make Buyer's own determination with respect to the presence on or beneath the Land (and other parcels in proximity thereto) of such Hazardous Materials. Furthermore, Buyer's closing hereunder shall be deemed to constitute an express waiver of Buyer's and its successors' and assigns' rights to sue any of the Seller group and of Buyer's right to cause any of the Seller group to be joined in an action brought under any federal, state or local law, rule, act, or regulation now existing or hereafter enacted or amended which prohibits or regulates the use, handling, storage, transportation or disposal of Hazardous Materials or which requires removal or remedial action with respect to such hazardous materials, specifically including but not limited to federal "CERCLA", "RCRA", and "SARA" acts.

### 3.3 Release.

(a) Without in any way limiting the generality of the preceding paragraphs, Buyer, on behalf of itself, its successors and assigns, specifically acknowledges and agrees that it forever waives, releases and discharges any claim it has, might have had or may have against the Seller Group, with respect to the condition of the Property, either patent or latent, Seller's ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy or other licenses for the use or operation of the Property, and/or certificates of compliance for the Property, the actual or potential income or profits to be derived from the Property, the real estate taxes or assessments now or hereafter payable thereon, the compliance with any environmental or occupational protection, pollution, subdivision or land use laws, rules, regulations or requirements or liability for violations thereof, and any other state of facts which exist with respect to the Property.

(b) Buyer specifically acknowledges that Buyer has carefully reviewed the foregoing provisions and discussed its import with legal counsel, is fully aware of its consequences, and that the provisions of this paragraph are a material part of this Agreement. The provisions of Article II shall survive the termination of this Agreement, or the delivery of the Deed and the Bill of Sale and the Closing.

3.4 Maintenance of Property. Except as Buyer may otherwise consent in writing, until the Closing Date, unless this Agreement is sooner terminated, Seller shall: (i) carry on the business of the Property in the ordinary course and in a manner consistent with Seller's prior practice; (ii) subject to the terms of Section 12.2 hereof, maintain the Property in its present condition and repair; ordinary wear and tear excepted; (iii) maintain the existing insurance policies for the Property (and any replacement thereof) in full force and effect; (iv) not sell, transfer, encumber, mortgage or place any lien upon the Property or in any way create or consent to the creation of any title condition affecting the Property; and (v) not enter into any Service Contracts or other similar agreements relating to the maintenance and repair of the Property unless they are cancelable upon thirty (30) days or less notice.

3.5 Entry Onto Property. Buyer shall obtain Seller's consent before entering the Property prior to Closing. Any entry upon the Property by or on behalf of Buyer shall be at Buyer's sole risk and expense, all work performed by or on behalf of Buyer shall be performed in a workmanlike manner, and the Property shall at all times be kept in a safe

condition. If requested by Seller, Buyer shall provide Seller with a certificate of comprehensive general liability insurance, in form, in an amount, and issued by a carrier reasonably acceptable to Seller, insuring Seller from all risks and loss associated with Buyer's exercise of its rights under this Paragraph. Buyer shall not cause or permit any damage to the Property or the imposition of any lien on the Property. Buyer promptly and at its own expense shall cause any such lien to be removed, and, in the event of such damage, shall restore the Property to the condition existing immediately prior to Buyer's (or Buyer's agent's) entry. Buyer shall indemnify, defend and hold Seller harmless from and against any claims, damages, expenses or losses, resulting from or related to Buyer's (or Buyer's agent's) entry upon the Real Property or activities in respect of the Property.

3.6 The provisions of this Article 3 shall survive the Closing.

#### **ARTICLE IV** **TITLE**

4.1 Evidence of and Encumbrances Upon Title. The Title Commitment is attached hereto as **Exhibit B**. Buyer acknowledges receipt of copies of all exceptions reflected therein. The Title Commitment was and is the basis upon which Buyer reviewed the status of title to the Land. Buyer shall take title subject to all Acceptable Encumbrances and the following shall be deemed "**Acceptable Encumbrances**":

(a) Real property taxes and assessments which are a lien against the Property but are not yet due and payable for the year in which the sale and purchase shall be closed, which shall be prorated as provided for herein;

(b) The standard printed exceptions contained in owner's title insurance policies;

(c) Zoning and other regulatory laws and ordinances affecting the Property;

(d) Matters that would be disclosed by an accurate survey;

(e) Easements for public utilities;

(f) Any plat affecting the Property;

(g) Any other matters of record reflected in the title commitments from Title Company, File No. 11-112924, dated February 7, 2011; and

(h) Any matters that are approved in writing by Buyer or deemed approved by Buyer in accordance with this Agreement.

(i) Such other matters and exceptions that do not materially and adversely affect the Property.

4.2 Updated Title Commitment. On or before the Closing Date, Buyer may cause the Title Company to update the Title Commitment. If the updated Title Commitment contains exceptions that do not constitute Acceptable Encumbrances, Buyer may file written objection thereto prior to the completion of the Closing but in no event later than 3 days after

receipt of the Title Commitment. If Buyer timely and properly files written objection to any item other than an Acceptable Encumbrance, then Seller shall have the right but not the obligation to use reasonable diligence to remove, discharge or correct such liens, encumbrances or objections and shall have a period of sixty (60) days after receipt of notice thereof in which to do so (and if necessary the Closing Date shall be extended). Seller shall not in any event be obligated to pay any sums of money or to litigate any matter in order to remove, discharge or correct any lien, encumbrance or objection. If Seller shall be unwilling or unable to remove or discharge such other liens, encumbrances or objections within such period, then Buyer may, at its option, no later than five (5) days after Seller notifies Buyer of Seller's unwillingness or inability, either terminate this Agreement or accept title in its then existing condition without reduction of the Purchase Price. If Buyer shall elect to terminate this Agreement, the Deposit shall be delivered to Buyer, this Agreement shall terminate, and thereafter neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated with respect to the indemnities and obligations of this Agreement which specifically survive termination. If the updated Title Commitment contains no exceptions other than the Acceptable Encumbrances or if Buyer fails to give written notice of objection to Seller prior to completion of Closing, all matters reflected on the updated Title Commitment shall be deemed Acceptable Encumbrances, this Agreement shall remain in full force and effect and Buyer shall be obligated to complete the transaction as required by this Agreement.

4.3 Title Policy. At Closing and as a condition to Buyer's obligation to close, the Title Company shall issue or be irrevocably and unconditionally committed to issue to Buyer an owner's title insurance policy, insuring that title is vested in Buyer as the fee simple owner of the Land in the full amount of the Purchase Price and subject to only the Acceptable Encumbrances.

## **ARTICLE V** **ESCROW AND CLOSING**

5.1 Escrow Instructions. Upon execution of this Agreement, the parties hereto shall deposit an executed copy of this Agreement with the Title Company, and this Agreement shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

5.2 Time and Place. Closing shall take place on the Closing Date or such earlier date as may be mutually acceptable to the parties with all deliveries to be made in escrow to the Title Company prior to or on the Closing Date. Buyer acknowledges that Seller may at Seller's option use closing proceeds to satisfy any mortgage or lien on the Property.

5.3 Seller's Deposit of Documents. At or before Closing, Seller shall deposit or cause to be deposited into escrow with the Title Company the following items:

(a) an executed Deed with respect to the Land, in the form of **Exhibit C** hereto, together with any State, County and local transfer tax declarations and forms required to be executed by Seller.

(b) an executed Affidavit in the form of **Exhibit D** hereto.

(c) an executed Bill of Sale (without representations or warranties) with respect to the Personal Property, if any, in the form of **Exhibit E** hereto.

(d) two counterparts of an executed Assignment and Assumption Agreement with respect to the Intangible Property, in the form of **Exhibit F** hereto, together with originals or copies of any Leases, Service Contracts and Permits, to the extent in Seller's possession (which such Leases, Service Contracts and Permits shall be delivered at Seller's property manager's office).

(e) a form letter executed by Seller to advise all Tenants under Leases in the form of **Exhibit G** hereto and a form letter executed by Seller to advise all contractors under Service Contracts, if any, in the form of **Exhibit H** hereto, of the sale to Buyer.

(f) unforfeited Security Deposits, if any, shall be transferred to Buyer unless credited to Buyer against the Purchase Price.

(g) an executed Buyer - Seller Closing Statement reflecting all financial aspects of the transaction.

(h) all plans, specifications, permits, licenses and keys in Seller's actual possession with respect to the Property (which shall be delivered at Seller's property manager's office).

5.4 Buyer's Deposit of Documents. At or before Closing Buyer shall deposit or cause to be deposited into escrow the following:

(a) cash to close in the amount required by Section 2.2.

(b) any State, County and local transfer tax declarations and forms required to be executed by Buyer.

(c) two counterparts of an executed Assignment and Assumption Agreement, in the form of **Exhibit F** hereto.

(d) an executed Buyer - Seller Closing Statement.

(e) evidence reasonably satisfactory to Seller and the Title Company reflecting that all documents executed by Buyer at Closing were duly authorized and executed.

(f) an executed Certificate of Buyer that all of Buyer's warranties and representations remain true as of Closing.

(g) an executed Corporate Resolution or Limited Liability Certificate of Buyer authorizing Buyer to consummate the transaction contemplated hereby and to perform all of Buyer's obligations hereunder.

(h) Certificate of Good Standing from the Secretary of State in which Buyer is organized (if other than the State, a certificate of the Secretary of the State authorizing Buyer to do business in the State will also be required).

(i) an executed Incumbency Certificate as to the existing officers and directors, partners or members of Buyer (if Buyer is a corporation, partnership or limited liability company).

5.5 Other Documents. Buyer and Seller shall each deliver such other documents as are otherwise required by this Agreement to consummate the purchase and sale of the Property in accordance with the terms hereof. Unless the parties otherwise agree in writing, the Title Company is hereby designated as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the United States Code and the regulations promulgated thereunder. If requested in writing by either party, the Title Company shall confirm its status as the "**Reporting Person**" in writing, which such writing shall comply with the requirements of Section 6045(e) of the United States Code and the regulations promulgated thereunder.

5.6 Possession. Possession of the Property, subject to the Leases, shall be surrendered to Buyer at the Closing.

## **ARTICLE VI**

### **ENVIRONMENTAL MATTERS**

6.1 Release. Without limiting Section 3.6, Buyer acknowledges that Seller and Auctioneer are not in any manner responsible to Buyer for the presence of any Hazardous Materials at, on, in, under or relating to the Property, if any. Buyer hereby specifically releases the Seller Group and Auctioneer from any and all claims, losses, liabilities, fines, charges, damages, injuries, penalties, response costs, and expenses of any and every kind whatsoever (whether known or unknown) relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the Property, if any, including without limitation, any residual contamination, in, on, under or about the Property or affecting natural resources, whether prior to or following Closing, and also including, without limitation, any liability due to asbestos-containing materials at the Property. Each covenant, agreement, representation, and warranty of Buyer contained in this Section 6.1 of this Agreement shall survive the Closing or termination of this Agreement.

6.2 Indemnification. Without limiting the provisions of Section 3.4 and Section 3.6(c), Buyer hereby indemnifies and agrees to defend, protect, save and hold Seller Group and Auctioneer harmless from and against any and all losses, liabilities, fines, charges, damages, injuries, penalties, response costs, expenses (including attorneys fees and costs at all levels) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Seller, or Auctioneer, with respect to or as a direct or indirect result of the

presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Material from, the Property. The foregoing indemnification includes (a) all foreseeable and unforeseeable consequential damages to the maximum extent permitted by law; (b) the costs of any required or necessary repair, remediation, or decontamination of the Property; and (c) any fines and penalties that may be imposed. This agreement to defend, indemnify, protect, save and hold harmless shall survive the Closing of this Agreement and shall be in addition to any other obligations or liability that Buyer may have to Seller Group or Auctioneer at common law or by statute or otherwise.

6.3 Confidentiality. Unless and until the Closing actually occurs, Buyer, its agents, consultants and employees shall keep confidential all Hazardous Materials Reports and other information, received or completed by Buyer in Buyer's independent factual, physical and legal examinations and inquiries of the Property, except that: (a) Buyer shall promptly after receipt provide copies thereof to Seller; and (b) Buyer may disclose same to its consultants if Buyer first obtains the agreement in writing of such consultants to keep such Hazardous Materials Reports and related documentation confidential. Unless and until the Closing actually occurs, neither the contents nor the results of any test, report, analysis, opinion or other information shall be disclosed by Buyer, its agents, consultants and employees without Seller's prior written approval unless and until Buyer is legally required to make such disclosure. The provisions of this Section 6.3 shall survive the termination of this Agreement.

## **ARTICLE VII WARRANTIES AND REPRESENTATIONS**

7.1 Buyer's Warranties and Representations. Buyer warrants and represents that: (a) Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and to carry out Buyer's obligations hereunder; (b) Buyer is a limited liability company, duly organized and in good standing under the laws of its state of formation and authorized to transact business in the State; (c) all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out Buyer's obligations has been obtained; (d) this Agreement has been duly authorized, executed and delivered by Buyer; and (e) the execution of this Agreement and the Closing to occur hereunder do not and will not violate any contract, covenant or other Agreement to which Buyer may be a party or by which Buyer may be bound. The provisions of this Section shall survive the Closing.

7.2 Seller's Warranties and Representations. Seller warrants and represents that: (a) Seller has the full right, power, and authority to sell the Property to Buyer as provided in this Agreement and to carry out Seller's obligations hereunder; (b) Seller is a limited liability company duly organized and in good standing under the laws of its state of formation; (c) all requisite action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations has been obtained; (d) this Agreement has been duly authorized, executed and delivered by Seller; and (e) the execution of this Agreement and the Closing to occur hereunder do not and will not violate any contract, covenant or other Agreement to which Seller may be a party or by which Seller may be bound. The provisions of this Section shall survive the Closing.

## **ARTICLE VIII** **ASSIGNMENT**

Buyer's reputation, experience, and financial status constitute a material inducement and a substantial part of the consideration for sale of the Property by Seller to Buyer. Therefore, Buyer may not assign this Agreement, nor may any of Buyer's rights hereunder or any ownership interest in Buyer be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller for any reason whatsoever except, however, that Buyer shall have the right to assign this Agreement, without Seller's consent, to an entity owned and controlled by Buyer; provided, however, any such assignment shall be binding on Seller only to the extent Buyer provides Seller with written intent to so assign, specifically naming the assignee, no later than ten (10) Business Days prior to Closing. If Buyer assigns this Agreement pursuant to the terms hereof: (a) the assignee shall be liable (jointly and severally with assignor) for all of Buyer's obligations hereunder; (b) the assignor (i.e., the original Buyer hereunder) shall remain obligated (but jointly and severally with assignee) with respect to all of Buyer's obligations hereunder; and (c) the assignor and any assignee shall execute such instruments of assignment and assumption in such form as Seller may require in confirmation of the provisions hereof.

## **ARTICLE IX** **BROKERAGE**

Buyer represents and warrants to Seller that Buyer has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction other than the Auctioneer, and that Buyer has not taken any action which would result in any real estate broker's finder's, or other fees or commissions being due or payable to any other party with respect to this transaction. Seller represents and warrants to Buyer that Seller has not contacted or entered into any agreement with any real estate broker, agent, finder, or party in connection with this transaction other than the Auctioneer and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due and payable to any other party with respect to this transaction. Each party hereby indemnifies, protects, defends and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) resulting to the other party from a breach of the representation and warranty made by such party herein. Seller agrees to pay the Auctioneer a commission in accordance with a separate written agreement by and between Seller and the Auctioneer, which commission shall be paid only if, as and when Closing actually occurs and the Purchase Price is received by Seller. If a cooperating broker is involved, the Auctioneer shall share the commission payable to the Auctioneer with the cooperating broker in accordance with a separately executed cooperation agreement between the Auctioneer and such cooperating broker. The provisions of this Article shall survive the Closing and termination of this Agreement.

## **ARTICLE X DEFAULT**

10.1 Buyer's Default. If Buyer shall fail to close the transaction contemplated hereby as and when required or if Buyer shall otherwise be in default of its obligations hereunder prior to Closing, the Deposit shall be paid over to Seller as agreed and liquidated damages, it being acknowledged by Buyer and Seller that in such event Seller will suffer substantial damages but such damages are incapable of exact ascertainment. After payment to Seller of the Deposit, neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated pursuant to the provisions hereof which survive termination. If subsequent to Closing Buyer shall fail to comply with its obligations contained herein which survive Closing, Seller, in addition to any rights and remedies provided herein, shall be entitled to any and all remedies available at law or in equity.

10.2 Seller's Default. If this transaction shall not be closed because of default of Seller, Buyer may, as its sole and exclusive remedy, by serving a written notice upon Seller and allowing Seller a minimum of five (5) Business Days in which to cure such objection or default, either (1) refund the Deposit to Buyer on demand, and, after repayment of the Deposit to Buyer, this Agreement shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated pursuant to the provisions hereof which survive termination, or (2) sue for specific performance of this Agreement, provided that such specific performance remedy shall be available to Buyer only upon (a) Buyer's full satisfaction of each of Buyer's obligations under this Agreement, including without limitation Buyer's obligation to deliver the Deposit to the Title Company and delivering sufficient proof to the Title Company and Seller that Buyer is ready, willing and able to close this transaction, and (b) Buyer commences its action of specific performance against Seller within thirty (30) days after the Closing Date. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages, including but not limited to punitive damages, consequential damages, incidental damages, and any and all other manner of damages, whether founded in law or in equity. Buyer agrees to indemnify, defend, protect, save and hold harmless Seller and each of Seller's directors, officers, employees, agents, affiliates, members, stockholders and other principals and representatives from and against any and all losses, claims, liabilities, damages, injuries, penalties and other costs and expenses of any and every kind whatsoever (collectively the "Losses") paid, incurred or suffered by or asserted against Seller as a result of or arising out of Buyer wrongfully seeking, commencing and/or prosecuting a specific performance action against Seller or in any way wrongfully filing a lis pendens or similar action against the Property, which Losses shall include without limitation any amounts which would otherwise have been realized by Seller had Seller been able to sell, transfer or convey the Property to any other buyer free of any such specific performance, lis pendens or other similar action.

10.3 No Obligation of Seller after Closing. Buyer expressly acknowledges and agrees that Seller has no obligations with respect to the Property that survive the Closing, except as specifically set forth herein. The provisions of this Section shall survive the Closing.

**ARTICLE XI**  
**NO JOINT VENTURE**

Buyer acknowledges and agrees that neither Seller nor any other member of the Seller Group is a venturer, co-venturer, insurer, guarantor or partner of Buyer in Buyer's development of, construction upon and resale of the Property, and that Seller and Seller Group bear and shall bear no liability whatsoever resulting from or arising out of Buyer's ownership and development of, and construction upon, the Property. Therefore, Buyer agrees to indemnify and hold harmless the Seller Group from and against any and all losses, claims, demands, damages, costs and expenses of whatsoever kind or nature including reasonable attorneys' fees, related to or arising out of any claims against Seller or any other member of the Seller Group as a result of Buyer's ownership or development of, or construction upon, or resale of, the Property. The provisions of this Article shall survive the Closing.

**ARTICLE XII**  
**MISCELLANEOUS**

12.1 Risk of Loss. Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property after the Execution Date or of any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking or condemnation of all or any portion of the Property after the Execution Date. If after the Execution Date and prior to Closing, there shall occur, damage to the Property caused by fire or other casualty which would cost an amount, greater than, or equal to, **ten percent (10%)** of the Purchase Price to repair, or the taking or condemnation of all or any portion of the Property which would materially interfere with the present use of such Property, then, in such event, Buyer shall have the right to terminate this Agreement by giving written notice to Seller in the form of the Termination Agreement, together with copies or originals of all Due Diligence Reports, within ten (10) days after Buyer has received notice from Seller or otherwise learns of that event. Upon such termination and delivery of copies or originals of all Due Diligence Reports, the Deposit shall be delivered to Buyer and neither party shall have any further rights or obligations hereunder, except, however, that Buyer shall remain obligated with respect to the indemnities and obligations herein which specifically survive termination. If Buyer does not so timely elect to terminate this Agreement, then the Closing shall take place as provided herein and there shall be assigned to Buyer at the Closing all interest of Seller in and to the insurance proceeds or condemnation awards payable to Seller on account of that event (the "**Proceeds**") in an amount up to, but not including, any Proceeds in excess of the Purchase Price (the "**Excess Proceeds**", the Proceeds minus any Excess Proceeds shall be hereinafter referred to as the "**Buyer's Proceeds**"), less sums which Seller incurs before the Closing to repair any of the damage.

If after the Execution Date and prior to Closing there shall occur damage to the Property caused by fire or other casualty which would cost less than **ten percent (10%)** of the Purchase Price to repair, or the taking or condemnation of a portion of the Property which would not materially interfere with the present use of the Property, then, Buyer may not terminate this Agreement and there shall be assigned to Buyer at the Closing all interest

of Seller in and to the Buyer's Proceeds, less sums which Seller incurs before the Closing to repair any of the damage.

If after the Execution Date and prior to Closing, there shall occur damage to the Property caused by fire or other casualty which would cost an amount greater than or equal to fifty percent (50%) of the Purchase Price to repair, then, in such event, Seller shall have the right to terminate this Agreement by written notice thereof delivered to Buyer within ten (10) days after that event. Upon such termination, the Deposit shall be delivered to Buyer and neither party shall have any further rights or obligations hereunder, except, however, that Buyer shall remain obligated with respect to the indemnities and obligations herein which specifically survive termination. If Seller does not so timely elect to terminate this Agreement, then, provided that Buyer has not terminated this Agreement as provided for in the first paragraph of this Section, the Closing shall take place as provided herein and there shall be assigned to Buyer at the Closing all interest of Seller in and to the Buyer's Proceeds, less sums which Seller incurs before the Closing to repair any of the damage.

If any Buyer's Proceeds in connection with a casualty to the Property are assigned to Buyer at Closing in accordance with this Section 12.2, Seller shall retain the exclusive right to process and handle the claim with Seller's insurance company. Seller and Buyer agree to use good faith efforts to cooperate with each other in resolving the amount of the Proceeds, including, without limitation, promptly providing any and all materials requested by the insurance company and promptly responding to any and all inquiries from the insurance company. Seller shall not have the right to agree to the amount of Buyer's Proceeds with the insurance company without the prior reasonable written consent of Buyer unless the Buyer's Proceeds equal the Purchase Price. Upon payment by the insurance company, the Buyer's Proceeds shall be disbursed to Buyer and the Excess Proceeds, if any, shall be disbursed to Seller. Seller makes no representation or warranty with respect to the amount of the Proceeds that will be paid by the insurance company in connection with any such casualty, including, without limitation, whether Buyer will be entitled to the actual cash value or the replacement cost of the Property. The provisions of this paragraph shall survive the Closing.

12.2 Construction. The terms "**Seller**" and "**Buyer**" whenever used in this Agreement shall include the heirs, personal representatives, successors and assigns of the respective parties hereto; provided, however, that Buyer's right of assignment is restricted by the provisions hereof. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term "**including**" as used herein shall in all instances mean "**including, but not limited to**". The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto.

12.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same Agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto, but having attached to it one or more additional signature pages.

12.4 Severability and Waiver. Invalidation of any one Section or provision of this Agreement by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other party (or parties) shall not constitute a waiver of such performance unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement. The provisions of this Section shall survive the Closing.

12.5 Governing Law. The laws of the State (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.

12.6 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, Seller and Buyer agree to perform, execute and/or deliver or cause to be delivered, executed and/or delivered at Closing or after Closing all further acts, deeds, and assurances reasonably necessary to consummate the transactions contemplated hereby.

12.7 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile, upon electronic or telephonic confirmation of receipt; (c) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; or (d) whether actually received or not, two (2) Business Days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO SELLER:

CBA 2005-1 Rock Creek REO, LLC.  
c/o Midland Loan Services  
10851 Mastin, Suite 700  
Overland Park, KS 66210  
Attention: Cindy Kruh, Asset Manager  
Facsimile: 913-253-9723

WITH A COPY TO: Benesch, Friedlander, Coplan & Aronoff, LLP  
2300 BP Tower  
200 Public Square  
Cleveland, Ohio 44114  
Attn.: David Mayo  
Facsimile: 216.363.4588

TO BUYER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

WITH A COPY TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

12.8 Entire Agreement and Amendment. This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be modified, amended, changed, waived, discharged or terminated orally. Any such action may occur only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought.

12.9 Recording. Buyer agrees not to record or file this Agreement or any notice or memorandum or reference to this Agreement in any public records, including, without limitation, the Recorder's Office in the County. Any such recordation or filing shall constitute a default, and upon such default Seller (a) may declare this Agreement null and void and exercise this option by recording or filing a notice that this Agreement is null and void in the public records; and (b) have the remedies provided by Article 10, above.

12.10 Exhibits. The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

12.11 Time of the Essence. Seller and Buyer expressly agree that time is of the essence with respect to this Agreement. If the final day of any period or any date of performance under this Agreement falls on a date which is not a Business Day, then the final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day.

12.12 No Third Party Beneficiary. This Agreement is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

12.13 Back-Up Contract(s). Buyer understands that Seller may negotiate with other parties and may enter into back-up contracts for the sale of the Property. The back-up contracts will be subject and subordinate to this Agreement so long as this Agreement is in full force and effect and Buyer is not in default hereunder.

12.14 Requisite Senior Management Approval. Prior to execution and delivery of this Agreement by Seller, this Agreement is subject to approval by Seller's senior management. Neither the submission of any proposal or this Agreement for examination to Buyer, nor any correspondence or course of dealing between Buyer and Seller shall constitute a reservation of or option for the Property or in any manner bind Seller. No contract or obligation on the part of Seller shall arise until this Agreement is approved by Seller's senior management and fully executed and unconditionally delivered by Seller. If, however, Seller executes and returns this Agreement to Buyer, the requirement for Senior Management Approval shall be deemed satisfied.

12.15 Limitation on Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, trustees, partners, members, representatives, stockholders or other principals and representatives of Seller. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to Seller's interest in the Property for the recovery of any judgment against Seller, and Seller shall not be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this paragraph shall apply equally and inure to the benefit of Seller's present and future officers, directors, trustees, shareholders, agents and employees, and their respective heirs, successors and assigns.

12.16 Mold Disclosure. Mold and/or other microscopic organisms can be found almost anywhere. They occur naturally in the environment and can grow on virtually any organic substance as long as moisture and oxygen are present. Mold and/or other microscopic organisms may cause property damage and/or health problems. Buyer acknowledges and agrees that Seller shall not be responsible for any damages, liabilities, claims or losses arising out of or relating to mold and/or other microscopic organisms at the Property including but not limited to property damages, personal injury, adverse health effects, loss of income, emotional distress, death, loss of use or loss of value and Buyer hereby releases Seller from the same. Buyer hereby acknowledges that it has read and understood this disclosure and release and agrees to the provisions contained herein. The provisions of this Section shall survive the Closing or termination of this Agreement.

12.17 Prohibited Persons. Neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24,

2001 ("**EO13224**"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("**OFAC**") most current list of "**Specifically Designated National and Blocked Persons**" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) who commits, threatens to commit or supports "**terrorism**," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "**Prohibited Person**"). Buyer covenants and agrees that neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive the Closing or termination of this Agreement.

### **ARTICLE XIII** **ESCROW TERMS**

The Title Company shall hold the Deposit in escrow on the following terms and conditions:

(a) The maturity of the investment for the Deposit shall not exceed ninety (90) days or the anticipated date of the Closing, whichever is earlier, and if such maturity shall occur prior to the Closing, the Deposit shall be reinvested under the same terms and conditions.

(b) The Title Company shall deliver the Deposit to Seller or Buyer, as the case may be, in accordance with the provisions of this Agreement.

(c) Any notice to or demand upon the Title Company shall be in writing and shall be sufficient only if received by the Title Company within the applicable time periods set forth herein, if any. Notices to or demands upon the Title Company shall be sent by United States mail, registered or certified, return receipt requested, postage prepaid, or overnight courier service, with respect for next day delivery, to the address set forth in Section 1.1 of this Agreement, Attention: Talon Title Agency of Central Ohio, Inc., or served personally upon the Title Company with receipt acknowledged in writing by the Title Company. Notices from the Title Company to Seller or Buyer shall be mailed to them in accordance with Section 12.8 of this Agreement.

(d) If the Title Company shall have received notice signed by either party advising that litigation between the parties over entitlement to the Deposit has been commenced, the Title Company shall, on demand of either party, deposit the Deposit with the clerk of the court in which such litigation is pending. If at any time the Title Company is uncertain of its duties hereunder or if the Title Company for any other reason is no longer willing to serve as escrow agent, the Title Company may, on notice to the parties, take such affirmative steps as it may, at its option, elect in order to terminate its duties as the Title Company, including, but not limited to, the deposit of the Deposit with a court of competent jurisdiction and the commencement of an action for interpleader, the reasonable costs of which shall be borne by whichever of the parties is the losing party. Upon the taking by the Title Company of such action described, the Title Company shall be released of and from all liability hereunder as escrow agent.

(e) The Title Company shall not incur any liability in acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by the Title Company to be genuine. The Title Company may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so, or is otherwise acting or failing to act under this Section except in the case of the Title Company's gross negligence or willful misconduct.

(f) The terms and provisions of this Article shall create no right in any person, firm or corporation other than the parties and their respective successors and permitted assigns and no third party shall have the right to enforce or benefit from the terms hereof.

(g) The Title Company has executed this Agreement for the sole purpose of agreeing to act as such in accordance with the terms of this Agreement.

#### **ARTICLE XIV LITIGATION**

14.1 Attorneys' Fees; Jurisdiction; Venue. In the event of any litigation arising out of or under this Agreement and/or out of Buyer's ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs. Buyer and Seller submit to the jurisdiction of the Webster County District Court in the State and the United States District Court for the Northern District of Iowa in respect of any suit or other proceeding brought in connection with or arising out of this Agreement. The provisions of this Section shall survive the Closing.

14.2 WAIVER OF JURY TRIAL. **The parties hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement and any document executed in connection herewith or related hereto, or any course or conduct, course of dealing, statements (whether oral or written) or actions of either party. This provision is a material inducement for the parties to enter into this transaction.**

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the Execution Date.

SELLER:

CBA 2005-1 Rock Creek REO, LLC,  
an Ohio limited liability company  
By: Midland Loan Services, a  
Delaware corporation, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

BUYER:

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXECUTION BY TITLE COMPANY

The Title Company executes this Agreement for the purposes of acknowledging its Agreement to serve as escrow agent in accordance with the terms of the Agreement and to acknowledge receipt of the initial deposit of \$\_\_\_\_\_ (if in the form of a check, subject to clearance) from Buyer as the initial Deposit due thereunder.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

## **EXHIBIT A**

### **Legal Description**

Situated in the Village of Rock Creek, Township of Morgan, County of Ashtabula and State of Ohio: Known as being in Township 10, Range 4 of the Connecticut Western Reserve and known as part of Lot No. 115 in said Village and bounded and described as follows: Beginning at a point in the Easterly side of Main Street, at the Northwest corner of land conveyed to Calvin P. Knowlton by deed dated January 5, 1980 and recorded in Volume 39, Page 280, Ashtabula County Record of Deeds, said place of beginning being 100 feet northerly from the intersection of the Easterly line of Main Street, with the northerly line of East Water Street; then Easterly along the Northerly line of said land so conveyed to Knowlton a distance of 84.85 feet to the Easterly line of an alley, described in an agreement, dated June 25, 1918, and recorded in Volume 230, page 218 of Ashtabula County Records; thence Northerly along the Easterly line of said alley, a distance of 44 feet to the Easterly Extension of the Southerly line of land conveyed Thomas Edgar by deed dated January 27, 1917, and recorded in Volume 224, Page 581 Ashtabula County Record of Deeds, thence Westerly along the Easterly extension of said Southerly line of said land so conveyed to Edgar, a distance of 64.85 feet to the Easterly line of Main Street; then Southerly along the Easterly line of Main Street, a distance of 44 feet to the place of beginning and containing .03 acres of land, be the same more or less, but subject to all legal highways.

Property Address: 3275 North Main Street, Rock Creek, Ohio 44084

**EXHIBIT B**

**SEE ATTACHMENT FOR TITLE COMMITMENT**



**EXHIBIT D**

**AFFIDAVIT**

STATE OF OHIO  
COUNTY OF ASHTABULA

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_  
\_\_\_\_\_ ("**Affiant**") as \_\_\_\_\_ of CBA 2005-1 Rock Creek REO,  
LLC, an Ohio limited liability company ("**Seller**"), who being by me first duly sworn,  
deposes and says:

1. Seller is this day conveying its rights, title and interest in and to the real property more particularly described on the attached **Exhibit A** hereto (the "**Property**") to \_\_\_\_\_, a \_\_\_\_\_ ("**Buyer**").

2. There have been no improvements, alterations or repairs to the Property authorized by Seller for which the costs thereof remain unpaid; there are no construction, materialmen's or laborers' liens against the Property arising through work performed by or for Seller.

3. Pursuant to Section 1445 of the Internal Revenue Code, a transferee (buyer) of a U.S. Real property interest must withhold tax if the transferor (seller) is a foreign person. This Affidavit is given to inform Buyer that withholding of tax is not required upon Seller's disposition of a U.S. real property interest. Seller is not a nonresident alien for purposes of U.S. income taxation purposes. Seller's U.S. taxpayer identifying number is \_\_\_\_\_. Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement made here could be punished by fine, imprisonment or both.

4. There are no parties in possession of the Property other than the tenants set forth on the attached list of tenants.

5. Under penalties of perjury Affiant declares that he has examined this certification and to the best of his knowledge and belief it is true and complete.

[SIGNATURE ON FOLLOWING PAGE]

CBA 2005-1 Rock Creek REO, LLC,  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, the \_\_\_\_\_ of CBA 2005-1 Rock Creek REO, LLC., an Ohio limited liability company, on behalf of the company. He is personally known to me or has produced a driver's license as identification.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
Serial No. (if any): \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT E**

**BILL OF SALE**

CBA 2005-1 Rock Creek REO, LLC, an Ohio limited liability company ("**Assignor**"), in accordance with the Agreement for Sale and Purchase of Property dated \_\_\_\_\_, 20\_\_\_\_ and in consideration of the sum of Ten Dollars (\$10.00) (the sufficiency and receipt of which are hereby acknowledged), does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver (collectively, "**assign**") unto \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**"), all of Assignor's right, title and interest in and to all of the furniture, furnishings, fixtures, equipment and other tangible personal property, that is now affixed to and/or located on the Real Property described on Exhibit A attached hereto and used in connection with the management, operation, or repair of the Real Property (collectively, "**Personal Property**").

TO HAVE AND TO HOLD the Personal Property unto Assignee and Assignee's heirs, legal representatives, successors and assigns forever.

**The Personal Property is being assigned "as is", "where is", and "with all faults" as of the date of this bill of sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability or any other warranty, express or implied. Assignee is hereby acquiring the Personal Property based solely upon assignee's own independent investigations and inspections of that property and not in reliance on any information provided by Assignor or Assignor's agents or contractors. Assignor has made no agreement to alter, repair or improve any of the Personal Property. Assignor specifically disclaims any warranty, guaranty or representation, oral or written, past or present, express or implied, concerning the Personal Property or Assignor's title thereto.**

IN WITNESS WHEREOF, Assignor has signed, sealed, and delivered this Bill of Sale as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**CBA 2005-1 Rock Creek REO, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT F

### ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between CBA 2005-1 Rock Creek REO, LLC, an Ohio limited liability company ("**Assignor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

WHEREAS, Assignor and Assignee entered into that certain Agreement for Sale and Purchase of Property ("**Agreement**") dated \_\_\_\_\_, 20\_\_\_\_, for the sale and purchase of certain "**Property**" consisting of "**Real Property**" (as more particularly described in Exhibit A attached hereto), "**Personal Property**" and "**Intangible Property**" (as more particularly described in this Assignment and Assumption Agreement), as said terms are defined in the Agreement;

WHEREAS, Assignor desires to assign, transfer, set over and deliver to Assignee all of Assignor's right, title and interest in and to the Intangible Property as hereinafter provided; and

WHEREAS, Assignee desires to assume the duties and obligations of Assignor with respect to the Intangible Property.

NOW, THEREFORE, in accordance with the Agreement and in consideration of the sum of Ten Dollars (\$10.00), the sufficiency and receipt of which are hereby acknowledged, the parties do hereby covenant and agree as follows and take the following actions:

1. Assignor does hereby assign, transfer, set over and deliver unto Assignee all of the Assignor's right, title and interest, if any, in and to the following property to the extent the same is transferable by Assignor (collectively, "**Intangible Property**"):

(a) any and all leases, tenancies, licenses and other rights of occupancy or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof), in effect as of the date of this Assignment and Assumption Agreement (collectively, "**Leases**");

(b) any and all any service, maintenance, supply, operating, or employment contracts or other agreements, however termed, written or oral, affecting the use, ownership, maintenance, or operation of all or any part of the Property (but specifically excluding any Leases and any management agreements) in effect as of the date of this Assignment and Assumption Agreement (collectively, "**Service Contracts**");

(c) any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property (collectively, "**Permits**");

(d) any and all warranties, telephone exchange numbers, architectural or engineering plans and specifications, air rights and development rights that exist as of the date of this Assignment and Assumption Agreement and relate to the Real Property or the Personal Property (collectively, "**General Intangibles**"); and

(e) any and all rights to the name of the improvements upon the Real Property.

2. **The Intangible Property is being assigned "as is", "where is", and "with all faults" as of the date of this Assignment and Assumption Agreement, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability or any other warranty, express or implied. Assignee is hereby acquiring the Intangible Property based solely upon Assignee's own independent investigations and inspections of that Property and not in reliance on any information provided by Assignor or Assignor's agents or contractors. Assignor specifically disclaims any warranty, guaranty or representation, oral or written, past or present, express or implied, concerning the Intangible Property or Assignor's title thereto.**

3. Assignee hereby accepts the foregoing assignment of the Intangible Property and hereby assumes all duties and obligations of Assignor under the Leases, Service Contracts, Permits and General Intangibles assigned herein. Assignee shall defend, indemnify and hold harmless Assignor from and against any and all Claims asserted against or incurred by Assignor as a result of any acts or omissions, from and after the date of this Assignment and Assumption Agreement, in connection with the Leases, Service Contracts, Permits and General Intangibles assigned herein. "**Claims**" means claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees, whether suit is instituted or not).

4. This Assignment and Assumption Agreement shall be (a) binding upon, and inure to the benefit of, the parties to this Assignment and Assumption Agreement and their respective heirs, legal representatives, successors and assigns, and (b) construed in accordance with the laws of the State of Iowa, without regard to the application of choice of law principles.

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been signed, sealed and delivered by the parties as of the date first above written.

ASSIGNOR:

**CBA 2005-1 Rock Creek REO, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNEE:

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT G**

**NOTICE TO TENANT**

\_\_\_\_\_, 2011

**RE:** \_\_\_\_\_  
\_\_\_\_\_

Dear Tenant:

Please be advised that on this date **CBA 2005-1 Rock Creek REO, LLC**, an Ohio limited liability company (the "**Prior Owner**"), has transferred ownership of the property known as \_\_\_\_\_, to \_\_\_\_\_, a \_\_\_\_\_ (the "**New Owner**"). All correspondence regarding your lease should hereafter be sent to the New Owner at \_\_\_\_\_. The New Owner has assumed all obligations of the landlord under your lease from and after the above date. All security deposits in the possession of the Prior Owner have been delivered to the New Owner. Please send all further rental payments under the lease to the New Owner to the address designated above for receipt of such payments, unless otherwise directed by the New Owner.

Thank you very much for your assistance in this matter.

Very truly yours,

\_\_\_\_\_,  
an \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT H**

**NOTICE TO SERVICE CONTRACTOR**

\_\_\_\_\_, 20\_\_\_\_

**RE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Service Contractor:

Please be advised that on this date CBA 2005-1 Rock Creek REO, LLC., an Ohio limited liability company (the "**Prior Owner**"), has transferred ownership of the property known as \_\_\_\_\_, to \_\_\_\_\_, a \_\_\_\_\_ (the "**New Owner**"). You must look to the New Owner, and not to the Prior Owner, for all payments and other expenses, if any, due under your contract for services provided after this date. All correspondence should be directed to the New Owner at \_\_\_\_\_.

Very truly yours,

**[PRIOR OWNER],**

a \_\_\_\_\_

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

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

Its: \_\_\_\_\_