

[CLICK HERE TO DOWNLOAD](#)

**ASSET PURCHASE AGREEMENT**

Dated as of \_\_\_\_\_, 20\_\_

By and Among

**CARMEN FINANCIAL CORPORATION,**

**KEYSTONE FINANCIAL CORPORATION,**

**CECIL J. JACKSON,**

**IRENE SMITH, EXECUTOR OF THE ESTATE OF JACKSON SMITH**

**IRENE SMITH, TRUSTEE OF THE CHARLIE TRUST,**

and

**ABC ACQUISITION CORPORATION**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“*Agreement*”) is made and entered into as of \_\_\_\_\_, 20\_\_, effective as of \_\_\_\_\_, 20\_\_, by and between Carmen Financial Corporation., a \_\_\_\_\_ corporation, (“*CM*”) and Keystone Financial Corporation, a \_\_\_\_\_ corporation (“*Keystone*”) (CM and Keystone are sometimes collectively referred to as the “*Sellers*”), Cecil J. Jackson (“*Cecil*”), Irene Smith, as Executor of the Estate of Jackson Smith (“*Irene*”), Irene Smith, Trustee of The Charlie Trust (“*Charlie Trust*”), (Irene and Jack are sometimes collectively referred to as the “*CM Shareholders*”, Irene, Jack, Charlie Trust and Cecil are sometimes collectively referred to as the “*Keystone Shareholders*” and the CM Shareholders and Keystone Shareholders are sometimes collectively referred to as the “*Shareholders*” ), and ABC Acquisition Corporation., a \_\_\_\_\_ corporation (“*Buyer*”).

### RECITALS

- A. Sellers own and operate an equipment leasing, financing and remarketing business (“*Business*”) located at 123 Main Street, Anytown, USA (“*Premises*”); and
- B. Sellers desire to sell substantially all of their assets to Buyer, and Buyer desires to purchase those assets, on the terms and subject to the conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

**1. Purchase and Sale of Assets.** On the Closing Date (as that term is defined in Section 5) Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and accept from Sellers, free and clear of all liens, claims, security interests and encumbrances, all of Sellers’ right, title and interest in and to all assets of Sellers (other than “*Excluded Assets*” as defined herein) used or useful in the operation of the Business (the “*Purchased Assets*”), including, without limitation, the following:

(a) Sellers’ entire portfolio of approximately \_\_\_ discounted and non-discounted equipment leases (the “*Purchased Leases*”) as identified in attached Schedule 1(a); provided however, Buyer will have no obligation to purchase any Purchased Leases (either Discounted or Non-Discounted Leases) where the rental under such lease is more than forty-five (45) days past due on the Closing Date.

(b) all original lease files, documentation, notes, payment history, equipment, software and collection rights related to the Purchased Leases;

(c) all marketing assets relating to Sellers' Business, including but not limited to: corporate and Business names, telephone number(s) fax numbers(s), e-mail addresses, marketing literature, client lists, prospect lists, vendor lists, records and agreements, website(s), world wide web domain name(s), all trademarks and service marks;

(d) all office furniture and equipment, including all office furniture, telephone system, and computer hardware and software; and

(e) all accounting and credit records, accounts receivable records and all other books and records relating to the operation of the Business.

**2. Excluded Assets.** Notwithstanding anything in Section 1 to the contrary, the Purchased Assets shall not include, and Sellers shall retain, the following:

(a) all cash, related party receivables due from affiliates and deposits other than Purchased Lease deposits;

(b) automobiles, personal property of the Shareholders not used in the Business and glass dining room table with chrome base;

(c) marketable securities;

(d) Existing Month to Month Leases ("Existing Month to Month Leases") identified on attached Schedule 2(d); and

(e) Receipts from the exercise from purchase options and month to month rentals under the Purchased Leases.

**3. Assumed Liabilities.** Except as provided in the following sentence, Buyer and Sellers agree that Buyer shall not assume, nor shall Buyer in any way be responsible for, any liability, obligation, claim or commitment, contingent, actual or otherwise, known or unknown, of Sellers or any of its Shareholders, directors, officers, employees or agents, it being expressly understood and agreed that Sellers shall continue to be responsible for any and all liabilities, obligations, claims or commitments of Sellers or the Business entered into on or prior to the Closing Date, including but not limited to, any sales, income, payroll or other taxes, obligations to other creditors including vendors, employees and customers or other liabilities, obligations, claims or commitments of the Sellers incurred in connection with the transactions contemplated hereby. Notwithstanding the preceding sentence, Buyer agrees that it will, on the Closing Date, assume and agree to perform and discharge solely and only the following obligations ("Assumed Liabilities"):

(a) All current and long-term notes payable to banks ("*Discounted Leases Bank Debt*") secured by Sellers' approximately \_\_\_ lease portfolio as identified in the attached Schedule 1(a) as the Discounted Purchased Leases.

(b) Approximately \$\_\_\_\_\_ in Lease Security and Other Lease Deposit liabilities as identified in the attached Schedule 1(a). Sellers will represent at Closing that each of the Purchased Leases have non-discounted fixed rent payable in the last months of the lease equal to the Lease Security or Other Lease Deposit outstanding with respect to each such Purchased Lease.

(c) Office lease rental in the amount of \$\_\_\_\_\_ per month relating to Sellers' remaining office lease (through \_\_\_\_\_, 20\_\_). Such lease shall be assigned to Buyer as a condition of Closing.

(d) Yellow Page, utility, telephone and similar monthly and periodic charges prorated as of the commencement of business on \_\_\_\_\_, 20\_\_.

#### **4. Purchase Price and Payments.**

(a) The cash purchase price ("*Cash Purchase Price*") for the Purchased Assets is \$\_\_\_\_\_ plus the discounted present value of the fixed "hell or highwater" rentals remaining due under the Non-Discounted Purchased Leases as identified in attached Schedule 1(a), using a discount rate equal to 8% per annum (estimated to be \$\_\_\_\_\_), payable in the form of a certified or cashier's check, or by wire transfer, to or at the direction of Sellers at Closing, subject to Sections 4(b) and 4(f) below.

(b) Rentals equal to the outstanding Lease Security or Other Lease Deposit with respect to the Non-Discounted Purchased Leases shall be excluded from the calculation of the Cash Purchase Price.

(c) Buyer will assume at Closing the Discounted Leases Bank Debt related to the Discounted Purchased Leases as identified in attached Schedule 1(a) and Buyer and Sellers will work together in good faith to relieve Sellers and its Shareholders from any personal liability under the Discounted Leases Bank Debt.

(d) Buyer shall collect and pay over to Sellers or Sellers' assignee on a monthly basis, by the fifteenth (15<sup>th</sup>) day following the end of each month, all receipts resulting from lessees' exercise of purchase options and month to month rentals (non-fixed term) under the Purchased Leases and Existing Month to Month Leases.

(e) The purchase price provided hereunder shall be calculated as of commencement of business on \_\_\_\_\_, 20\_\_ and all closing pro-rations shall be made as of commencement of business on \_\_\_\_\_, 20\_\_.

(f) An amount equal to \$\_\_\_\_\_ (“*Holdback Amount*”) shall be held back at Closing as a loss reserve for any losses incurred by Buyer as a result of defaults under leases which secure the Discounted Leases Bank Debt assumed by Buyer. The Holdback Amount shall be deposited into an escrow account (“*Escrow Account*”) with an escrow agent agreeable to both Buyer and Sellers. The escrow agent shall pay to Buyer any losses incurred by Buyer with respect to any such defaulted leases at such time as rental payments under such lease is at least ninety (90) days past due. The amount of the loss will equal the present value discounted at the debt rate of the remaining unpaid fixed rents under such defaulted lease (“*Loss Payment*”). Upon any such payment, Sellers or Sellers’ assignee shall be responsible for further collection activity, including litigation, of the defaulted lease. Any monetary recoveries from any such defaulted lease shall be paid to Sellers or Sellers’ assignee, provided that Buyer has received the full Loss Payment with respect to such defaulted lease. Sellers or Sellers’ assignee shall be entitled to withdraw from the Escrow Account on the first, second, third, fourth and fifth anniversary of the Closing an amount equal to 20% of the original Holdback Amount (“*Seller Withdrawal*”) less any Loss Payments made to Buyer during the twelve (12) month period preceding such withdrawal. In the event that the Loss Payments made in any year exceed 20% of the original Holdback Amount such excess shall be carried over to the subsequent twelve (12) month period. Buyer and Sellers or Sellers’ assignee must jointly consent in writing to each withdrawal from the Escrow Account.

(g) The parties shall mutually agree to allocate the Purchase Price among the Purchased Assets in accordance with Schedule 4(g) attached hereto and to file Form 8594 with their 20\_\_ Federal income tax returns reflecting the information reported on Schedule 4(g)

**5. Closing.** The consummation of the transactions contemplated by this Agreement (the “*Closing*”) shall take place on \_\_\_\_\_, 20\_\_, (the “*Closing Date*”) to be effective as of the commencement of business on \_\_\_\_\_, 20\_\_ (the “*Proration Date*”), at 10:00 a.m. at the offices of Sellers’ attorney, or at such other time and place as the parties may mutually agree.

**6. Closing Deliveries.**

(a) At the Closing, Sellers shall deliver to Buyer the following:

(i) a bill of sale, or such other good and sufficient instruments of assignment and transfer as Buyer shall reasonably request, to assign and to transfer to Buyer all of Sellers’ right, title and interest in and to the Purchased Assets free and clear of all security interests, liens, claims and encumbrances, other than liens arising in connection with the Discounted Leases Bank Debt;

(ii) an assignment of all trade names and any other trademarks or service marks of Sellers;

(iii) state and county level UCC lien searches indicating that the Purchased Assets are free from any liens or encumbrances, other than liens arising in connection with the Discounted Leases Bank Debt;

(iv) any Required Consents (as that term is defined in Section 10(b));

(v) recent good standing certificates from the \_\_\_\_\_ Secretary of State;

(vi) certified resolutions of Sellers' Board of Directors and Shareholders approving this Agreement and the transactions contemplated hereby;

(vii) duly executed \_\_\_\_\_ Secretary of State Amendments of Articles of Incorporation forms (BCA 10.30) changing the Sellers' names to names not containing the words "CM", "Financial", "Keystone" or "Municipal";

(viii) a certificate executed by Sellers and Shareholders dated as of the Closing Date stating: (A) that all of the representations and warranties of Sellers and Shareholders set forth in this Agreement are materially true and correct with the same force and effect as if such representations and warranties were made on the Closing Date, and (B) that Sellers have performed and complied with all of the covenants and obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date;

(ix) evidence of assignment of the office lease pursuant to Section 14(i).

(x) Bulk Sales Stop order issued by the \_\_\_\_\_ Department of Employment Security in accordance with Section 12(d) hereof; and

(xi) such other documents as Buyer may reasonably request in order to evidence and effectuate the obligations and duties of Sellers pursuant to this Agreement.

(b) At the Closing, Buyer shall deliver to Sellers the following:

(i) the Cash Purchase Price pursuant to Section 4;

(ii) an assumption of the Discounted Leases Bank Debt;

(iii) the Consulting Agreement provided for in Section 12(e);

(iv) a recent good standing certificate from the \_\_\_\_\_ Secretary of State;

(v) certified resolutions of Buyer's Directors and Shareholders confirming

that this Agreement and the transactions contemplated hereby have been approved;

(vi) a certificate executed by Buyer dated as of the Closing Date stating: (A) that all of the representations and warranties of Buyer set forth in this Agreement are materially true and correct with the same force and effect as if such representations and warranties were made on the Closing Date, and (B) that Buyer has performed and complied with all of the covenants and obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date; and

(vii) such other documents as Sellers may reasonably request in order to evidence and effectuate the obligations and duties of Buyer pursuant to this Agreement.

**7. Intentionally Omitted**

**8. Representations and Warranties of Sellers and Shareholders.** Sellers and the CM Shareholders, with respect to CM, and the Keystone Shareholders, with respect to Keystone hereby jointly and severally (subject to the limitations contained in Section 18(e)) represent and warrant to Buyer as follows:

(a) Organization and Authority. Sellers are corporations, duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_. Sellers have all requisite corporate power and authority to carry on its business as they are presently being conducted, to enter into this Agreement, and to carry out and perform the transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement by Sellers has been duly authorized and approved by their respective Shareholders and their respective Board of Directors, and will not violate their Articles of Incorporation, By-Laws, or any agreement to which they are a party or by which they are bound or any law, rule, regulation or court order. This Agreement, and all other instruments, documents and agreements to be delivered by Sellers in connection therewith, are the legal, valid and binding obligation of Sellers enforceable in accordance with its, and their, terms. Schedule 8(a) hereto correctly sets forth the Shareholders of each Seller and the number of shares owned by each such Shareholder.

(b) Title/Condition. Sellers have good and marketable title to the Purchased Assets, free and clear of any liens, claims, security interests or encumbrances, except for the lien arising under the Discounted Leases Bank Debt with respect to the Discounted Purchased Leases and the equipment leased thereunder. Each item of tangible Purchased Assets is in good working order and repair, ordinary wear and tear excepted.

(c) Purchased Leases. Sellers have delivered to Buyer true, correct, and complete

copies of all of the Purchased Leases. All Purchased Leases are valid and binding obligations of the applicable Seller and the other parties thereto, in accordance with their terms and are in full force and effect; and (ii) neither the applicable Seller nor any other party is in default in the payment of any obligation under or in the performance of any material covenant or obligation to be performed by it pursuant to any Purchased Lease, except for any late payment of rent by the applicable lessee not more than forty-five (45) days past due. The execution, delivery and performance of this Agreement by Sellers will not cause the Sellers to be in default under any Purchased Lease. All lessees and sub-lessees under the Purchased Leases are creditworthy, are able to satisfy their respective obligations under the Purchased Leases as they mature, and none of such lessees or sub-lessees (or their guarantors, if any) have suffered any material adverse change in condition (financial or other) since the date of the Purchased Lease to which it is a party. All equipment leased to or by the Company pursuant to a Purchased Lease is in good working condition and repair, ordinary wear and tear excepted. The lessee's obligation to paying rent in the amount and for the term specified on Schedule 1(a) is fixed and not subject to offset, defense, pledge or counterclaim of any kind whatsoever. Each of the Purchased Leases have non-discounted fixed rent payable in the last months of the lease equal to the Lease Security or Other Lease Deposit outstanding with respect to each such lease.

**(d) Financial Statements.** All financial statements (including balance sheets and income statements) previously delivered to Buyer by Sellers, including the balance sheets and statements of income dated December 31, 20\_\_, December 31, 20\_\_, December 31, 20\_\_, May 31, 20\_\_ and June 30, 20\_\_ ("*Financial Statements*"), fairly present the financial condition of Sellers for the time period presented. All Financial Statements present fairly in all material respects the financial condition and results of operations of the Sellers for the respective periods indicated.

**(e) No Material Liabilities.** To the best knowledge of Sellers and the Shareholders, Sellers are not subject to any material liability (including, without limitation, unasserted claims whether known or unknown), whether absolute, contingent, accrued or otherwise, which is not shown or which is in excess of amounts shown or reserved for in the respective Financial Statements, other than (a) liabilities of the same nature as those set forth in such balance sheet and incurred in the ordinary course of Sellers' business after the date indicated and (b) those items not required to be accrued, footnoted or otherwise reserved for or disclosed under GAAP.

**(f) No Material Adverse Changes.** Since December 31, 20\_\_, there has been: (i) no material adverse change in Sellers, the Business or its financial condition or prospects except as may be noted in the Financial Statements; and (ii) no material damage, destruction, loss or claim, whether or not covered by insurance, or condemnation or other taking adversely affecting in any material respect the assets or properties of the Sellers or the Business, including the Purchased Assets. Since December 31, 20\_\_, Sellers have conducted the



Business in the ordinary course and in conformity with past practice.

(g) Taxes. Sellers have timely filed all required federal, state, county and local income, withholding, property, sales, use, franchise and other tax returns, declarations and reports which are required to be filed in connection with the Business on or before the date of this Agreement, and has paid or reserved for all taxes which have become due pursuant to such returns or pursuant to any assessment which has become payable in connection with the Business except for taxes which it has contested in good faith.

(h) Employees. Sellers are not a party and have never been a party to any collective bargaining agreement. Sellers have complied in all material respects with all applicable laws, rules and regulations which relate to prices, wages, hours, employee documentation, immigration, discrimination in employment and collective bargaining and to the operation of the Business and is not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing. Schedule 8(h) lists all employees of Sellers, dates of hire, current job titles and current compensation levels.

(i) Employee Benefits. To the best knowledge of Sellers and the Shareholders, all employee benefit plans maintained by Sellers comply in all material respects with applicable law, including reporting and disclosure requirements, and have been administered in accordance with their respective provisions and applicable law in all material respects.

(j) Litigation. There is no litigation or proceeding or governmental investigation pending or, to the knowledge of Sellers or Shareholders, threatened, against Sellers relating to the Purchased Assets or the Business.

(k) Compliance with Laws; Approvals. Sellers have complied in all material respects with all federal, state and local laws, statutes, rules, regulations, ordinances and codes, and have received no written notice from any governmental agency asserting that a violation has or may have occurred. No consent, approval, order or authorization of, or negotiation, declaration or filing with, any governmental authority or entity or other party is required of the Sellers in connection with the execution, delivery and performance of this Agreement or the consummation of any of the transactions contemplated hereby or thereby.

(l) Governmental Permits, Licenses. To the best knowledge of Sellers and the Shareholders, Sellers and the Business possess all necessary governmental permits, licenses, franchises and authorizations (collectively, "*Permits*") to conduct the Business. The Permits are listed on Schedule 8(l) and those which are not transferable are also designated in said schedule. The Permits are in full force and effect and there are no defaults or breaches, or events which but for notice or lapse of time or both would constitute a breach or default under the Permits and all Permits are transferable without obtaining the consent of the issuing body, except as set forth on Schedule 8(l).

(m) Discounted Leases Bank Debt. Sellers have furnished to Buyer true, correct and complete copies of all documents, and instruments evidencing and securing the Discounted Leases Bank Debt. Schedule 8(m) correctly sets forth the Discounted Leases Bank Debt: (i) the current holder of the note or other evidence of such indebtedness; (ii) the original principal amount, and the currently outstanding principal balance, of such indebtedness; (iii) the interest rate (or the formula for establishing same, if applicable) applicable to such indebtedness; and (iv) a brief description of the collateral pledged to secure such indebtedness. Neither Sellers, nor any other party, to the knowledge of Sellers or Shareholders, is in default under any such document or instrument, nor has any event occurred which, with notice or the lapse of time of both, may constitute such a default by Sellers, or to the knowledge of Sellers, any other party, except as listed in Schedule 8(m).

(n) Intellectual Property. Sellers own all of the trade secrets, patents, copyrights, business methods, trade names, trademarks, service marks, corporate names, inventions, trade secrets, sensitive and confidential business information (such as customer lists, pricing, gross margins, telephone numbers), mailing lists, know-how and proprietary and confidential information (collectively, "*Intellectual Property*"). free and clear of all liens, claims, security interests, encumbrances and restrictions, and all Intellectual Property is in full force and effect and has not been licensed from or to or used by any person. Sellers have not, to their or Shareholders' knowledge, infringed on any Intellectual Property of another. There is no claim pending, or to the knowledge of Sellers and Shareholders, threatened against the Sellers with respect to alleged infringement of any Intellectual Property owned by another nor, to the best knowledge of Sellers and the Shareholders, does the operation of the Business in the manner in which it has been operated give rise to any such claim.

(o) Insurance. Schedule 8(o) hereto correctly identifies all self-funded insurance programs, insurance policies and bonds covering the Sellers or any of their assets, properties, operations or personnel (other than such insurance coverage as is provided by lessees under the Purchased Leases). To the best knowledge of Sellers and the Shareholders, such programs, policies and bonds are in full force and effect. The Sellers have not received any notice of cancellation, termination or non-renewal or denial of liability with respect to any such program, policy or bond.

(p) Brokers. Neither Sellers nor any party acting on their behalf has any obligation or liability to pay any fee or commission to any broker or finder in connection with this Agreement or the transactions contemplated by this Agreement.

(q) Schedules. All schedules presented by Sellers are true, complete and correct and such schedules will be true, correct and complete as of the Closing Date.

**9. Representations and Warranties of Buyer**. Buyer hereby represents and warrants

to Sellers as follows:

(a) Organization and Authority. Buyer is a corporation, duly formed, validly existing, and in good standing under the laws of the State of \_\_\_\_\_. Buyer has all requisite power and authority to carry on its business as it is presently being conducted, to enter into this Agreement, and to carry out and perform the transactions contemplated by this Agreement. The execution, delivery, and performance of this Agreement by Buyer has been duly authorized and approved by its shareholders, and will not violate its Articles of Incorporation or constitute a default under any agreement or instrument to which Buyer is a party or by which it is bound.. This Agreement, and all other instruments, documents and agreements to be delivered by Buyer in connection therewith, are the legal, valid and binding obligation of Buyer enforceable in accordance with its, and their, terms.

(b) Brokers. Neither Buyer nor any party acting on its behalf has any obligation or liability to pay any fee or commission to any broker or finder in connection with this Agreement or the transactions contemplated by this Agreement.

(c) There is no litigation, proceeding or governmental investigation (whether federal or state) pending or, to the best of Buyer's knowledge, threatened against or relating to Buyer.

**10. Actions Prior to the Closing Date**. The parties covenant and agree to take the following actions between the date of this Agreement and the Closing Date:

(a) Investigation of Sellers by Buyer. Sellers shall afford to the officers, employees and authorized representatives (including, without limitation, independent public accountants and attorneys) of Buyer a full and complete opportunity to conduct and complete its acquisition review and analysis of the Purchased Assets and Discounted Leases Bank Debt, including: (i) a review of Sellers' relevant books and records, financial information, and agreements; (ii) an inspection and review of the physical operations of Sellers' business, and the right to contact and communicate with the Sellers' vendors, creditors, lessees, customers, employees, independent contractors and others having a business relationship with Sellers in connection with the Business. Provided, however, that Buyer will keep and maintain any and all information relating to Sellers confidential, and will not make use of any such information other than for its evaluation of the proposed transaction.

(b) Consents and Approvals. Sellers shall use their best efforts promptly to obtain all consents and amendments from parties to leases, contracts, licenses, permits and other agreements set forth on Schedule 10(b) which require consent (as so indicated on Schedule 10(b) attached hereto), together with estoppel letters from parties to material agreements (the "*Required Consents*").

(c) Preservation of Representations and Warranties. Each of the parties shall refrain from taking any action which would

render any of the representations and warranties contained in Section 8 or Section 9 inaccurate as of the Closing Date.

(d) Exclusive Dealing. Provided Buyer has not breached its obligations hereunder or this Agreement has not terminated, Sellers, Shareholders and their affiliates shall deal exclusively with the Buyer with respect to the sale of the Purchased Assets and the Business. Neither Sellers nor Shareholders shall solicit, encourage or entertain offers or inquiries (nor shall Sellers, Shareholders or any of their affiliates authorize or permit any director, officer, employee, attorney, accountant or other representative or agent to solicit, encourage or entertain offers or inquiries) from other possible acquiring companies, persons or entities, provide information to or participate in any discussions or negotiations with any companies, persons or entities with a view to an acquisition of all or substantially all of Sellers' assets or stock or any interest therein

#### **11. Continuance of Business Operations in the Ordinary Course.**

(a) Between the date of this Agreement and the Closing Date, Sellers shall continue to conduct the Business in the ordinary course and shall not, except with Buyer's prior written consent (which will not unreasonably be withheld) or as may be required by law: (i) move its offices or the Purchased Assets; (ii) change its billing practices; (iii) increase the salaries, bonuses or compensation structure of any employee or consultant other than in the ordinary course of business and consistent with past practices; (iv) offer any customer interests at any promotional or discounted fee; (v) terminate any employee; (vi) terminate or amend the Discounted Leases Bank Debt; (vii) sell or otherwise dispose of any of the Purchased Assets except in the ordinary course of business consistent with past practices; or (viii) make any commitment to do any of the foregoing. Sellers shall not purchase any new or used office equipment to be used at its office without Buyer's prior written consent, which consent shall not be unreasonably withheld, provided that such purchase is required to replace an existing piece of equipment that is no longer functional.

(b) Between the date of this Agreement and the Closing Date, Sellers will: (i) provide Buyer with updated monthly current balance sheets and statements of income and loss relating to the Business, which such statements shall be subject to the same representations and warranties as contained in Section 8(d); (ii) pay accounts payable and collect accounts receivable in accordance with past practices; (iii) maintain the Purchased Assets in good operating condition and repair, ordinary wear and tear excepted; and (iv) maintain existing insurance coverage.

#### **12. Other Agreements.**

(a) Sellers' Employees. Buyer agrees to retain Sellers' employees, Melinda, Joan and Donna, on the same basis which they are currently employed by the Sellers, and make its best

efforts to incorporate each such employee into Buyer's ongoing operations. In the event that any such employee is involuntarily terminated by Buyer within six (6) months of the closing, Buyer agrees to pay any such terminated employee a three (3) month severance package in return for their non-compete agreement.

(b) Transfer Taxes. Any sales, transfer, use or similar taxes or fees (including but not limited to income or gains taxes) imposed as a result of the sale of the Purchased Assets shall be borne by Sellers.

(c) Transaction Expenses. Each of the parties to this Agreement shall bear its own costs and expenses (including legal and accounting fees) incurred in connection with this Agreement and the transactions contemplated by this Agreement.

(d) Bulk Sales Compliance. As soon as practicable from the date hereof, Sellers shall give a report of sale to the \_\_\_\_\_ Department of Employment Security ("IDES") as contemplated under Section 750 of the \_\_\_\_\_ Unemployment Compensation Act. At the Closing, Sellers shall provide to Buyer either (i) a receipt from the IDES evidencing that no amounts are owed by Sellers to such department, (ii) statement from such department stating the amounts which are owed by Sellers (the "Deficiency") or (iii) an estimate mutually agreed to by the parties of such liability (the "Estimate"). The Deficiency or Estimate, if any, shall be withheld from the cash portion of the Cash Purchase Price due at Closing and shall be paid to Buyer's attorney as the Tax Escrow Agent. Upon receipt of a final order from the IDES, Tax Escrow Agent shall either (1) release all or a portion of the Deficiency or Estimate to IDES, as the case may be, in satisfaction of such final order or (2) if no amounts are due to IDES pursuant to such final order, or if less than the amount of the Deficiency or Estimate is due IDES pursuant to such final order, the Deficiency and/or Estimate or the balance thereof, as the case may be, shall be released to Sellers. In consideration for Buyer not requiring that Sellers give a report of sale to the \_\_\_\_\_ Department of Revenue ("IDOR") as contemplated under Section 902(d) of the \_\_\_\_\_ Income Tax Act and Section 5(j) of the \_\_\_\_\_ Retailers' Occupation Tax Act, Cecil hereby agrees that Buyer can offset against any payments due him or his heirs under the Consulting Agreement, defined in Section 12(e) hereof, any and all obligations, expenses (including but not limited to reasonable attorney's fees and expenses), claims and/or liabilities (collectively, "IDOR Transferee Liability") arising out of the Sellers not reporting the transactions contemplated by this Agreement to the IDOR or not providing Buyer with a release or stop order from the IDOR. In the event Buyer offsets any IDOR Transferee Liability against any payments due under the Consulting Agreement, Cecil or his heirs shall have the right of contribution for any such offset from the other Shareholders based on their respective stock ownership in the Sellers.

(e) Consulting Agreement. Cecil and the Buyer shall enter into a consulting agreement ("*Consulting Agreement*") which shall provide that Cecil be retained as a consultant by the Buyer and paid a consulting fee by the Buyer amounting to 48 consecutive

monthly payments of \$\_\_\_\_\_ each with the first payment commencing January 1, 20\_\_ and continuing on the first day of each month thereafter through and including December 1, 20\_\_.

The payments due under the Consulting Agreement shall be subject to offset as provided in Sections 12(d) and 18(d) hereof. The Consulting Agreement will provide that Cecil will make the necessary efforts to ensure the successful transitioning of all Business knowledge relating to procedures, practices, documentation, lease administration, vendor relationships, client relationships and documentation. In connection therewith, Cecil shall be available on a daily basis for such consultation with the Buyer during the term of this consulting arrangement and will be reimbursed for reasonable travel expenses. The Consulting Agreement will require Cecil to facilitate the formal in person introductions of Buyer to Sellers' key vendor relationships.

**(f) Non-Competition and Non-Solicitation.**

**(i)** For a period of five (5) years following the Closing Date, neither Sellers nor their affiliates, including Shareholders, shall (individually or as a consultant, shareholder, partner, venturer, director, officer, agent or otherwise) (a) engage in the business of operating an equipment leasing, equipment financing and/or equipment remarketing business or any related enterprise that is competitive with the products or services offered by the Business in any geographic area in which Buyer conducts its business, (b) solicit, call on or contact any past (within the past twelve (12) months) or present customers, vendors, lessees, suppliers or employees of Sellers with respect to the Business. Sellers and Shareholders agree for a five (5) year period subsequent to the Closing Date: a) not to become employed or perform services for a conflicting organization; or c) on behalf of themselves or any other person or entity, hire, attempt to hire, or assist in hiring any person who was an employee of Sellers or Buyer at any time during the five (5) year period.

**(ii)** In addition, Sellers and Shareholders shall keep and maintain all confidential and proprietary information of Sellers, including without limitation, financial statements, customer and supplier lists, pricing information, sales and purchases margins and practices, methods of telephone solicitation and similar information regarding the business and affairs of Sellers, confidential and shall not disclose such information to any third person or exploit such information personally except as required under law, or if such information is in the public domain.

**(iii)** In the event that Sellers or Shareholders breach the provisions of this Section 12(f), Buyer shall have the non-exclusive right and remedy to have this section specifically enforced to the extent permitted by any court of competent jurisdiction, it being acknowledged and agreed that any breach or threatened breach might cause immediate irreparable injury to Buyer and that monetary damages may not provide an adequate remedy at law. If any of the provisions of this Section 12(f)

are construed to be invalid or unenforceable in any jurisdiction, the remainder of this section shall not be affected, and the court making such a determination shall have the power to modify this Section 12(f) and substitute the maximum duration, scope, or area permissible under the circumstances for the stated duration, scope, or area.

(g) Further Assurances. After the Closing, Sellers shall, at Buyer's reasonable request and without further consideration, execute such additional instruments of conveyance and transfer and provide to Buyer such additional documents as Buyer may require more effectively to assign and transfer the Purchased Assets to Buyer, including without limitation, any materials necessary to effectuate registration, recordation or protection of the Intellectual Property.

**13. Conditions Precedent to Obligations of Sellers**. The obligations of Sellers under this Agreement shall be subject to the satisfaction, on or prior to the Closing Date, of the conditions set forth below, unless waived by Sellers:

(a) The representations and warranties of Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement, and shall also be true and correct in all material respects (giving effect to any qualification of materiality already contained in any particular representation or warranty, and except for such changes as are contemplated by the terms of this Agreement) on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and Buyer shall have delivered to Sellers a certificate to that effect dated as of the Closing Date.

(b) Buyer shall have performed and complied with, in all material respects, all covenants and obligations required to be performed or complied with by it under this Agreement on or prior to the Closing Date, and Buyer shall have delivered to Sellers a certificate to that effect dated as of the Closing Date.

(c) Sellers shall have received the items listed in Section 6(b);

(d) Sellers shall have received such other documents and agreements necessary to effect the transactions contemplated by this Agreement, in each case in form and substance reasonably satisfactory to Sellers' counsel, as Sellers may reasonably request.

(e) No action, suit, investigation or proceeding shall have been instituted or threatened by any third party, governmental or regulatory agency to restrain, prohibit or otherwise challenge the legality or validity of the transactions contemplated by this Agreement.

**14. Conditions Precedent to Obligations of Buyer**. The obligations of Buyer under this Agreement shall be subject to the satisfaction, on or prior to the Closing Date, of the conditions set

forth below, unless waived by Buyer:

(a) The representations and warranties of Sellers and Shareholders set forth in this Agreement shall be true and correct as of the date of this Agreement, and shall also be true and correct in all material respects (giving effect to any qualification of materiality already contained in any particular representation or warranty, and except for such changes as are contemplated by the terms of this Agreement) on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and Sellers and Shareholder shall have delivered to Buyer a certificate to that effect dated as of the Closing Date.

(b) Sellers shall have performed and complied with, in all material respects, all covenants and obligations required to be performed or complied with by it under this Agreement on or prior to the Closing Date, and Sellers shall have delivered to Buyer a certificate to that effect dated as of the Closing Date.

(c) Sellers shall have furnished Buyer with copies of resolutions duly adopted by Sellers' Board of Directors and Shareholders approving the execution and delivery of this Agreement, and all other necessary or proper corporate action to enable Sellers to comply with the terms of this Agreement.

(d) From the date of this Agreement through the Closing Date, Sellers shall not have suffered any material adverse changes to the business, operations or financial condition of the Business (other than changes generally affecting the industries in which Sellers operates, or changes relating to the transactions contemplated by this Agreement).

(e) Buyer shall complete its investigation of Sellers in accordance with Section 10(a) prior to the Closing Date provided that Sellers fully cooperate. In the event that such investigation discloses a breach of a representation or warranty of Sellers contained in Section 8 hereof, Buyer shall so notify Sellers in writing on or before the Closing Date and provide Sellers with the full details of such claimed breach. In such event, Sellers and Buyer shall work together in good faith to rectify such claimed breach;

(f) Buyer shall have received the items listed in Section 6(a);

(g) Buyer shall have received such other documents and agreements necessary to effect the transactions contemplated by this Agreement, in each case in form and substance reasonably satisfactory to Buyer's counsel, as Buyer may reasonably request.

(h) No action, suit, investigation or proceeding shall have been instituted or threatened by any third party, governmental or regulatory agency to restrain, prohibit or otherwise challenge the legality or validity of the transactions contemplated by this Agreement.

(i) The office lease for Sellers' office at 123 Main Street, Anytown, USA which



provides for monthly rental in the amount of \$\_\_\_\_\_ and a term expiring \_\_\_\_\_, 20\_\_, shall have been assigned to Buyer and any necessary consent by the landlord to the assignment obtained.

**15. Termination.**

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by the mutual consent of Sellers and Buyer;

(ii) by either Sellers or Buyer if the Closing shall not have occurred before \_\_\_\_\_, 20\_\_ (unless the failure to close by such date shall be due to the action or failure to act of the party seeking to terminate this Agreement); or

(iii) by either Sellers or Buyer if: (A) the other party has materially breached any representation, warranty, covenant, or agreement in connection with this Agreement, and such breach has not been cured within fourteen (14) days following receipt of written notice of the existence of such breach; or (B) any permanent injunction or other order of a court or other competent authority preventing the consummation of the transactions contemplated by this Agreement shall have become final and non-appealable.

**16. Survival of Representations and Warranties.** The representations and warranties of Sellers and Shareholders and Buyer contained in Section 8 and 9, respectively, shall survive the Closing Date for two (2) years and shall then terminate, except that the representation and warranties contained in Sections 8(a), (b)(first sentence only) and 9(a) shall survive in perpetuity and the representations and warranties contained in Section 8(g) (“Taxes”) shall survive until the expiration of the applicable statute of limitation with respect to the underlying claim to which such representation and warranty relates.

**17. Risk of Loss.** The risk of loss to the Purchased Assets shall remain with Sellers until the completion of the Closing. If the Purchased Assets located at the Premises are materially damaged or destroyed by fire or other casualty prior to the Closing so as to cause a material interruption of the Business, Buyer may either: (a) terminate the Agreement without liability to either party; (b) proceed to Closing, in which event such casualty shall not constitute a breach by Sellers of any representation, warranty or covenant in this Agreement and Buyer shall be entitled to receive any insurance proceeds arising from such casualty; or (c) delay the Closing up to three (3) months while the affected Purchased Assets are repaired or restored.

**18. Indemnification.**

(a) Subject to the limitations of Section 18(e), CM and the CM Shareholders hereby agree to hold harmless and indemnify Buyer from and against any action, suit, proceeding,

loss, damage, or expense (including, without limitation, reasonable attorneys' fees and court costs), arising out of, or relating to (i) any breach by CM or the CM Shareholders of this Agreement or any of the representations, warranties, covenants or obligations of CM or CM Shareholders contained herein, and (ii) any liability or obligation of CM existing prior to the Closing Date, or arising after the Closing Date and relating to events occurring prior to the Closing Date, other than the Assumed Liabilities.

(b) Subject to the limitations of Section 18(e), Keystone and the Keystone Shareholders hereby agree to hold harmless and indemnify Buyer from and against any action, suit, proceeding, loss, damage, or expense (including, without limitation, reasonable attorneys' fees and court costs), arising out of, or relating to, (i) any breach by Keystone or the Keystone Shareholders of this Agreement or any of the representations, warranties, covenants or obligations of Keystone or Keystone Shareholders contained herein, and (ii) any liability or obligation of Keystone existing prior to the Closing Date, or arising after the Closing Date and relating to events occurring prior to the Closing Date, other than the Assumed Liabilities.

(c) Subject to the remainder of this Section 18, Buyer hereby agrees to hold harmless and indemnify Sellers from and against any action, suit, proceeding, loss, damage, or expense (including, without limitation, reasonable attorneys' fees and court costs), arising out of, or relating to, any breach by Buyer of this Agreement or any of the representations, warranties, covenants or obligations of Buyer contained herein.

(d) Buyer shall have the right to offset any amounts due to Buyer from Cecil under Section 18(b) above against any amounts due and payable to Cecil under the Consulting Agreement. .

(e) Except for the Buyer's right of offset provided in Section 12(d) hereof against payments payable to Cecil and his heirs under the Consulting Agreement, in no event will any Shareholder be obligated to pay any amounts to the Buyer pursuant to Section 18(a) or Section 18(b) hereof in excess of the Shareholder's share of the Purchase Price determined by multiplying the Shareholder's ownership percentage of the common stock of the applicable Seller on the Closing Date by the portion of the Purchase Price allocated to such Seller.

(f) In the event that the Buyer becomes aware of facts or events giving rise to obligations of Sellers or the Shareholders to indemnify the Buyer under Sections 18(a) or (b), Buyer shall notify Sellers or the Shareholders, as applicable, of such fact or event in writing, setting forth specifically the obligation with respect to which the claim is made, the facts giving rise to and the alleged basis for such claim and, if known or reasonably ascertainable, the amount of the liability asserted or which may be asserted by reason thereof. Such notice shall be given within a reasonable time of the discovery by the Buyer of facts which constitute the basis for a claim against the Buyer which may give rise to a right of indemnity or promptly following receipt of notice of the assertion of a claim against the Buyer which may give rise to

a right of indemnity, whichever shall occur first; *provided, however*, that failure to so notify Sellers or the Shareholders of any such claim shall discharge Sellers or the Shareholders, as applicable, of their liabilities and obligations hereunder only if and to the extent that Sellers or the Shareholders are materially prejudiced thereby. In the event of the assertion of a claim against the Buyer which may give rise to a right of indemnity, the Buyer shall allow Sellers or the Shareholders to, and Sellers or the Shareholders shall, at their respective expense, defend against such claim with counsel of Sellers', or the Shareholders', selection subject, in any case, to the Buyer's approval, not to be unreasonably withheld or delayed; *provided, however*, that Sellers or Shareholders, as applicable, shall not settle, adjust or compromise such claim without the prior written consent of the Buyer. The Buyer shall, at its own expense, provide such documents, records and other evidence in its possession, and access to such employees, as Sellers or the Shareholders may reasonably request, shall cooperate with Sellers or the Shareholders in defending such claim, and shall take no other action with regard to an indemnified claim or any investigation, proceeding or action relating thereto, which is in derogation of Sellers' or the Shareholders' right of control or which has not been specifically requested or approved in advance by Sellers or the Shareholders.

(g) In the event that the Sellers become aware of facts or events giving rise to obligations of Buyer to indemnify the Sellers under Section 18(c), the Sellers shall notify Buyer of such fact or event in writing, setting forth specifically the obligation with respect to which the claim is made, the facts giving rise to and the alleged basis for such claim and, if known or reasonably ascertainable, the amount of the liability asserted or which may be asserted by reason thereof. Such notice shall be given within a reasonable time of the discovery by the Sellers of facts which constitute the basis for a claim against the Sellers which may give rise to a right of indemnity or promptly following receipt of notice of the assertion of a claim against the Sellers which may give rise to a right of indemnity, whichever shall occur first; *provided, however*, that failure to so notify Buyer of any such claim shall discharge Buyer of its liabilities and obligations hereunder only if and to the extent that Buyer is materially prejudiced thereby. In the event of the assertion of a claim against the Sellers, or any of their respective subsidiaries, which may give rise to a right of indemnity, the Sellers shall allow Buyer to, and Buyer shall, at its expense, defend against, compromise or settle such claim with counsel of Buyer's selection. The Sellers at their own expense, shall provide such documents, records and other evidence in their possession, and access to such employees, as Buyer may reasonably request, shall cooperate with Buyer in defending such claim, and shall take no other action with regard to any indemnified claim or any investigation, proceeding or action relating thereto, which is in derogation of Buyer's right of control or which has not been specifically requested or approved in advance by Buyer.

## **19. Miscellaneous.**

(a) **Notices.** Any notice or other communication required or desired to be served,

given, or delivered under this Agreement shall be deemed validly served, given, or delivered upon actual receipt or: (i) five (5) days following the deposit thereof in the United States mail, registered or certified, with proper postage prepaid; (ii) the next business day following transmission thereof in a legible facsimile transmission, only if confirmed; or (iii) the next business day following prepaid deposit thereof with a nationally recognized overnight courier, in each case addressed to the person to be notified at the address or facsimile number listed below. The address of any party may be changed by written notice to the other parties duly served in accordance with this Section 19(a).

If to Sellers or Shareholders:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

With a copy to:

If to Buyer:

ABC Acquisition Corporation  
123 Main Street  
Anytown, USA  
Fax No.:

With a copy to:

**(b) Entire Agreement/Modifications.** This Agreement, together with the schedules, exhibits and the documents delivered pursuant hereto, contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the parties hereto. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the parties hereto.

**(c) Attorneys' Fees.** The prevailing party in any action brought in connection with this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

**(d) Assignability.** No party may assign any of its rights or obligations under this Agreement (directly, indirectly, or by operation of law through a merger, sale of equity interest, or otherwise) without the other party's express written consent, and any attempt to do so shall be void.

(e) **Application of Illinois Law.** This Agreement, and its application and interpretation, shall be governed exclusively by its terms and by the internal laws of the State of \_\_\_\_\_ without regard to the choice of law principles of that state.

(f) **Construction.** When required by the context, whenever the singular number is used in this Agreement the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

(g) **Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions.

(h) **Waivers.** The failure of any party to seek redress for the violation of or to insist upon the strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act that originally would have constituted a violation from having the effect of an original violation.

(i) **Severability.** If any provision of this Agreement, or its application to any person or circumstance, shall be found invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and its application shall not be affected, and shall remain enforceable to the fullest extent permitted by law.

(j) **Heirs, Successors, and Assigns.** Each of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

(k) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement, as of the date first above written.

SELLERS:

BUYER:

CARMEN FINANCIAL CORPORATION

ABC ACQUISTION CORPORATION

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

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

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

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

KEYSTONE FINANCIAL CORPORATION

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

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

SHAREHOLDERS:

\_\_\_\_\_  
Cecil J. Jackson

\_\_\_\_\_  
Irene Smith, Executor of the Estate of Jackson Smith, deceased

\_\_\_\_\_  
Irene Smith, Trustee of The Charlie Trust

## SCHEDULES

Schedule 1(a)	Purchased Leases, including Discounted and Non-Discounted Leases, rent Monthly Rent and Remaining Term and Lease Security and Other Lease Deposits
Schedule 2(d)	Existing Month to Month Leases
Schedule 4(g)	Allocation of Purchase Price
Schedule 8(a)	Shareholders
Schedule 8(h)	Employees
Schedule 8(l)	Permits
Schedule 8(m)	Discounted Leases Bank Debt
Schedule 8(o)	Insurance
Schedule 10(b)	Required Consents

LAWYERS' MENTOR