

# ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is dated this \_\_\_\_ day of June, 2006, and entered into between Ian J. Gazes solely as the chapter 7 Trustee of Peaceful Management Inc., debtor ("Seller"), and [REDACTED] ("Buyer").

## RECITALS

A. Seller is the chapter 7 Trustee of the case entitled Peaceful Management Inc. ("Peaceful" or "Debtor"), a New York corporation governed by and operating under the laws of the State of New York.

B. Peaceful was engaged in the business of owning and operating a vehicle garage facility located 700 Pacific Street, Brooklyn, New York ("Premises").

C. Pursuant to the provisions hereof, Buyer desires to purchase from the Seller and the Seller desires to sell to Buyer the Seller's right title and interest in and to the property and assets of Peaceful used in the operation of Garage including the lease for the Premises dated October 16, 2002 between Shaya B. Pacific LLC as landlord and Peaceful as Tenant (collectively the "Peaceful Assets"), a copy of which is attached hereto.

NOW THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

### 1. PURCHASE OF THE ASSETS

1.1 Purchased Assets. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined in SECTION 9.1), the Seller shall sell, transfer, convey, assign and deliver his right title and interest to Buyer (or upon Buyer's request, to an Affiliate of Buyer) the Peaceful Assets and Buyer shall purchase and accept the Peaceful Assets free and clear of any debts, liabilities, claims, liens, security interests, encumbrances or obligations other than the Assumed Liabilities, if any, as hereafter defined (the "Sale"). The Peaceful Assets shall include those assets listed in ARTICLE 2 hereof. For purposes of this Agreement, the term "Affiliate" shall mean any individual or entity (hereafter a "Person"), directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Person, as applicable. The term "control," as used in this section, shall mean with respect to a corporation or limited liability company, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

### 1.2 PURCHASE PRICE

1.2(a) Amount. The Purchase Price shall be [REDACTED] in cash to be paid by Buyer at Closing, after the adjustments set forth in Section 1.3 and in the order of the United States Bankruptcy Court for the Southern District of New York (the

“Bankruptcy Court”) approving the Sale ( the “Sale Order”), which is subject to higher and better offers at an auction to be conducted by the Trustee.

1.2(b) Manner of Payment. The Purchase Price, as the same may be adjusted pursuant to Section 1.3 hereof and the Sale Order, shall be paid at the Closing by certified check payable to the order of “Estate of Peaceful Management Inc. Ian J. Gazes as Trustee”.

### 1.3 Adjustments to Purchase Price.

Credits The Purchase Price paid to the Seller pursuant to SECTION 1.2 shall be adjusted by any rent adjustment for post closing rent and additional rent prepaid by Seller. All security deposits including those relating to electricity, gas, insurance, water, heating oil shall constitute property of the Seller. The Buyer will establish its own accounts for electricity, gas, insurance, water, heating oil, if utilized at the Leased Real Property as hereinafter defined.

1.4 Allocation of Purchase Price. The Purchase Price for the sale of the Assets shall be allocated as follows: [REDACTED] for the Lease and [REDACTED] for the personal property.

## 2. TRANSFER OF ASSETS

2.1 Definition of Peaceful Assets. The assets are as follows:

2.1(a) The lease of real property dated, October 16, 2002 between Shaya B. Pacific LLC, as Landlord, and the Debtor located at 700 Pacific Street, Brooklyn, New York and any amendment thereto (the "Real Property Lease") with respect to the real property described therein.

2.1(b) Personal Property. All machinery, equipment, tools, supplies, spare parts, furniture, and all other personal property located at the Premises, which are owned by the Debtor in the operation of the Peaceful Assets.

2.2 Prorations. The following prorations relating to the Purchased Assets will be made as midnight the day preceding the Closing Date, with the Seller liable to the extent such items relate to any time period up to and including midnight the day prior to the Closing Date and Buyer liable to the extent such items relate to periods commencing with the Closing Date and thereafter. The net amount of all such prorations will be settled and paid on the Closing Date.

2.2(a) Personal property taxes, real estate taxes and assessments if any (including special assessments levied prior to midnight the day preceding the Closing Date) including other taxes, if any, on or with respect to the Purchased Assets.

2.2(b) Rents, additional rents, taxes and other items payable by the Seller under the Real Property Lease.

2.2(c) The amount of rents, taxes and, to the extent applicable (subject to section 1.3(a)), charges for sewer, water, fuel, telephone, electricity and other utilities; provided that if practicable, meter readings shall be taken on the applicable Closing Date and the respective obligations of the parties determined in accordance with such readings.

2.2(d) All other items normally adjusted in connection with similar transactions.

If the actual expense of any of the above items for the billing period within which the Closing Date falls is not known on the Closing Date, the proration shall be made based on good faith estimates established by the parties based on the period immediately preceding the Closing Date.

2.3 Excluded Assets. The provisions of SECTION 2.1 notwithstanding, the Seller is not selling, transferring, assigning, conveying or delivering to Buyer, and Buyer will not purchase or accept all claims, books and records, computer software and hardware, corporate minute books and stock ledgers and other corporate governance documents, or causes of action arising on or after the filing of the chapter 7 case of the Debtor, all cash and cash equivalents, all accounts receivable, and all intellectual property (collectively, the "Excluded Assets").

### 3. LIABILITIES

3.1 Liabilities Not to be Assumed. As used in this Agreement, the term "Liability" shall mean and include any direct or indirect indebtedness; guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, secured or unsecured arising on or before midnight the day before the Closing Date with the exception of a claim or cause of action the Trustee/debtor may have against the Buyer in connection with the management services provided by the Buyer to the Trustee and/or Debtor. Except as and to the extent specifically set forth in SECTION 3.2, Buyer is not assuming any Liabilities of the Seller and all such Liabilities shall be and remain the responsibility of the Seller.

3.2 Liability to be Assumed. Subject to the terms and conditions of this Agreement, on and after midnight prior to the Closing Date, Buyer shall assume and agree to perform and discharge the following (collectively, the "Assumed Liabilities") all Liabilities arising from events occurring after midnight the day prior to the Closing Date under and pursuant to the Real Property Lease or related to the Peaceful Assets.

The Contracts describe in SECTIONS 3.2 above are hereinafter collectively described as the "Assumed Executory Contracts." The Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all claims, costs, expenses and liabilities, including reasonable attorneys' fees in connection with the Assumed Executory Contracts, to the extent such liability arises out of any events first occurring subsequent to midnight prior to the Closing Date.

**BUYER ASSUMES NO AGREEMENT OR CONTRACT OF SELLER EXCEPT THE ASSUMED EXECUTORY CONTRACTS AND ALL RENTAL AGREEMENTS, WHETHER VERBAL AND/OR WRITTEN BETWEEN THE DEBTOR AND THE CUSTOMERS OF THE GARAGE.**

3.3 Landlord's Consent. Seller shall promptly commence such necessary proceeding in Bankruptcy Court to assure that the Real Property Lease can be assigned in accordance with the terms and conditions of the Agreement.

### 4. REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to Buyer that, subject to entry of an order of the Bankruptcy Court approving the sale contemplated hereunder all of Seller's representation if any in this Contract are true and correct in all material respects on the date hereof except as otherwise provided, shall remain true and correct in all material respects to and including the Closing Date and shall be unaffected by any investigation heretofore or hereafter made by Buyer, or, except as specifically provided herein, any knowledge of Buyer.

#### 4.1 General

4.1(a) Organization. The Seller is the chapter 7 interim trustee of the estate of the Debtor duly appointed and qualified as such by the United States Trustee.

4.1(b) Power. Subject to entry of an order of the Bankruptcy Court approving this Agreement the Seller has the authority to consummate the sale contemplated hereunder.

4.2 Authority. The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by the Seller pursuant hereto and the consummation of the transactions contemplated hereby and thereby are subject to entry of an Order of the Bankruptcy Court approving same including the assignment of the Lease. In the event the Bankruptcy Court does not approve the sale contemplated hereunder including the assignment of the Lease to the Buyer for any reason other than the willful default of the Buyer the sole obligation of the Seller shall be to return the Deposit to the Buyer with any accrued interest it being understood that the Buyer shall not have any further rights, claims or causes of action against the estate of the Debtor or the Trustee in his official and individual capacity.

This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by the Seller pursuant hereto will constitute, valid binding agreements of the Seller, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles except that the sale contemplated hereunder is subject to higher and better offers. Notwithstanding the foregoing, the Seller is not bound under this Agreement until such time as the Bankruptcy Court enters a non-appealable order approving this Agreement.

4.3 Buyer is purchasing the Peaceful Assets "AS IS" and "WHERE AS" without any representations, oral, written, implied or expressed, including without limitation any representations concerning the conduct of business of the Debtor or whether the Debtor has the requisite government or quasi-governmental authority to operate the Garage.

4.4 Personal Property Leases. No leases of personal property are included in the sale. Notwithstanding the foregoing all Personal Property Leases shall be rejected by the Seller effective the Closing date.

4.5 The Peaceful Assets being transferred pursuant to this Agreement, as of the Closing Date, will be transferred free and clear of all liens, encumbrances, and encumbrances other than the Assumed Liabilities.

4.6 The Buyer is not relying on any representation or warranty, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Seller pursuant to this Agreement.

## 5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

Buyer represents and warrants to the Seller that each of the following is true and correct in all material respects on the date hereof, shall remain true and correct in all material respects to and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by the Seller or any knowledge of the Seller.

### 5.1. Organizational Structure.

5.1(a) Organization. Buyer is an individual with his principal residence in New York County, New York.

5.1(b) Power. Buyer has the financial ability to carry out the transactions contemplated hereby and thereby.

5.2 Authority. Should the Buyer assign this Agreement as permitted hereunder to a corporation or limited liability company or partnership the execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Buyer pursuant hereto and the consummation of the transactions contemplated hereby and thereby will be duly authorized by Officer(s)/Members of Buyer. No other act or proceeding on the part of Buyer or its Officer(s)/Members is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Buyer pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Buyer assignees pursuant hereto will constitute, valid and binding agreements of Buyer, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles.

5.3 Disclosure. No representation or warranty by Buyer in this Agreement, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Buyer pursuant to this Agreement or in connection with transactions contemplated hereby, contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make the statements contained therein not misleading.

5.4. Buyer's Cooperation. Buyer will use commercially reasonable efforts, without incurring unreasonable expense, to cooperate with the Seller in obtaining any of the consents necessary for the consummation of the transactions contemplated in this Agreement.

## 6. BROKER

As shall be set forth in the Sale Order, no broker fee will be due and owing to any broker in regard to this transaction.

## 7. OTHER MATTERS

7.1 Pre-Closing Revenue and Expenses. The Seller shall be responsible for all expenses, debts and other Liabilities of the Seller arising out of or relating to periods prior to and including the Closing Date.

7.2 Good Faith Obligations. Buyer and Seller agree to proceed diligently, and in good faith to consummate the transactions contemplated hereunder and otherwise to cause the Closing to occur, and will use all reasonable efforts to take or cause to be taken all actions, and to do or cause to be done all things necessary, proper or advisable to cause the Closing to be consummated, provided, however, that neither Buyer nor Seller shall be obligated to waive any conditions to its obligations to close set forth in this Agreement.

7.3(a) The Bankruptcy Court shall have entered the Bid Procedures in a form and substance reasonably satisfactory to Seller, and approving the form of notice and scheduling a hearing for consideration of the motion.

7.3(b) The Bankruptcy Court shall have entered the Sale Order that shall not be stayed, vacated or modified.

## 8. FURTHER COVENANTS OF THE SELLER

The Seller covenants and agrees as follows:

8.1 Access to Premises. Upon Buyer giving 48 hour notice to Seller or its attorney listed in this Agreement, during the period commencing ten days prior to Closing, the Seller shall give Buyer, and its representatives reasonable access during normal business hours to the Leased Real Property for the purpose of inspection thereof;

8.2 Conduct of Business Pending the Closing. The Seller is seeking authority to operate the business of the Debtor. However, should the Bankruptcy Court deny the Seller's motion to operate the business of the Debtor and the operations cease the Buyer shall nevertheless be obligated to close.

## 9. CLOSING

9.1 The Closing is defined as:

9.2 Closing Date. The "Closing Date" of the sale of the Purchased Assets by the Seller to the Buyer shall take place ten days after entry of a non-appeal able order of the Bankruptcy Court approving the sale contemplated by this Agreement.

9.3 Place of Closing. The closing shall take place at Gazes LLC, 32 Avenue of the Americas, New York, New York 10013.

9.4 Documents to be Delivered by the Seller. On the Closing Date, the Seller shall deliver to Buyer the following documents, in each case duly executed or otherwise in proper form:

9.4(a) Bills of Sale. Bills of sale and such other instruments of assignment, transfer, conveyance and endorsement to transfer, assign, convey and deliver to Buyer the Purchased Assets as contemplated hereby.

9.4(b) Resolutions. A copy of the resolution of the duly authorized Officer(s)/member of Buyer authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.

9.4(c) Other Documents. All other documents, instruments or writings required to be delivered to the Seller on or prior to the Closing Date pursuant to this Agreement and such other certificates of authority and documents as the Seller may reasonably request.

## 10. SALE PROCEDURES

10.1 Seller shall file with the Bankruptcy Court within ten (10) Business Days of execution of this Agreement, the Sale Motion and (i) shall include an obligation of Seller to assume the Real Property Lease that will be assigned to Buyer pursuant to Section 365 of the Bankruptcy Code, (ii) shall provide for all authorizations necessary for the sale of the Purchased Assets to Buyer and the execution and delivery of all documents contemplated herein, (iii) shall include a finding of fact that Buyer's making its purchase in good faith within the meaning of Section 363(m) of the Bankruptcy Code, (iv) shall not be subject to injunction or stay preventing consummation of the transaction, (v) shall provide that the transfer and sale of the Purchased Assets is free and clear of all Liens, and (vi) shall provide that Buyer shall not be assuming any of the employee related plans, contracts or obligations of Seller, except as expressly set forth herein.

## 11. MISCELLANEOUS

11.1 Further Assurance. From time to time, upon request and without further consideration, the parties will execute and deliver such documents and take such other action as may be reasonably requested in order to consummate more effectively the transactions contemplated hereby.

### 11.2 Assignment; Parties in Interest.

11.2(a) Assignment. Except as expressly provided herein, the rights and obligations of a party hereunder may not be assigned, transferred or encumbered without the prior written consent of the other parties. Notwithstanding the foregoing, Buyer may, without consent of any other party, assign its rights and obligations hereunder to an Affiliate.

11.2(b) Parties in Interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto. Nothing contained herein shall be deemed to confer upon any other person any right or remedy under or by reason of this Agreement.

11.3 Law Governing Agreement. This Agreement may not be modified or terminated orally, and shall be construed and interpreted according to the United States Code, Title 11 and the internal laws of the State of New York, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

11.4 Amendment and Modification. Buyer and the Seller may amend, modify and supplement this Agreement in such manner as may be agreed upon by them in writing.

11.5 Survival. All representations, warranties, covenants and agreements made in this Agreement or in any exhibit, schedule, certificate or agreement delivered in accordance with this Agreement shall survive the execution and delivery of this Agreement, but shall be extinguished and be of no further force or effect after the Closing unless otherwise specified herein to survive the Closing.

11.6 Notice. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; or (b) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Buyer, to:

or to such other person or address as Buyer shall furnish to the Seller in writing.

(b) If to the Seller, to:

Gazes LLC  
32 Avenue of the Americas  
New York, New York 10013

or to such other person or address as the Seller shall furnish to Buyer in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section. Notices sent by facsimile or other electronic means shall not constitute notice under this Agreement.

11.7 Expenses. Regardless of whether or not the transactions contemplated hereby are consummated:

11.7(a) General Expenses. Except as otherwise provided herein, each of the parties shall bear its own expenses and the expenses of its counsel, accountants, and other agents in connection with the transactions contemplated hereby.

11.7(b) Costs of Litigation. The parties agree that the prevailing party in any action brought with respect to or to enforce any right or remedy under this Agreement shall be entitled to recover from the

other party or parties all reasonable costs and expenses of any nature whatsoever incurred by the prevailing party in connection with such action, including without limitation reasonable attorneys' fees and prejudgment interest.

11.8 Entire Agreement. This instrument and the agreements referred to herein embody the entire agreement between the parties hereto with respect to the transactions contemplated herein, and there have been and are no agreements, representations or warranties between the parties other than those set forth or provided for herein.

11.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.10 Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

11.11 Conflict. In the event of any inconsistency between this Agreement and the Sale Order the parties agree that the Sale Order shall be binding.

11.12 Tax. Each of the parties shall pay their own respective taxes as ordinarily provided in transactions of similar nature and the parties each agree to execute all reasonable requests in furtherance thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

"SELLER"

Estate of Peaceful Management Inc.,

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By: Ian J. Gazes, Trustee

"BUYER"

Scott Lieberman  
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