

2013AGREE (F)

GUERNSEY'S

DATE: February 16, 2012

REFERENCE: Harrisburg Collection of
Historic Artifacts



CONSIGNMENT AGREEMENT BETWEEN:

SELLER: City of Harrisburg

ADDRESS: 10 North Second Street, Suite 402
Harrisburg, Pennsylvania, 17101

AND

GUERNSEY'S
A Division of Barlan Enterprises, Ltd.
108 East 73rd Street
New York, New York 10021
212-794-2280 FAX: 212-744-3638

Thank you for consigning your property to Guernsey's. This contract confirms our agreement under which all property you consign to us, as listed on the inventory list that you have provided along with such additional items as may be discovered within the Collection but are not currently inventoried (the "Property"), will be offered by us as your agent for sale at public auction subject to provisions as set forth below and Guernsey's standard Terms and Conditions of Sale in effect at the time of the auction. In the event of a conflict between the Terms and Conditions of Sale, on the one hand, and this Agreement, on the other hand, the terms of this Agreement shall control. From time to time, we will refer to you as "Consignor."

1. Guernsey's Responsibility. We shall be responsible for any and all costs incurred in connection with the pre-auction and auction activities including, but not limited to, the promotion of same, packaging and transportation of the items, organizing and cataloguing items for sale, hiring of experts, advertising, employment of auction site personnel, and obtaining the required permits for auction, display, as well as other expenses reasonably required to conduct the auction; Guernsey's shall have absolute discretion with respect to the foregoing matters.

2. Consignor's Responsibility. Consignor agrees to allow the Property to remain where it is currently stored until the time of the auction, as well as following the auction for sold items being held for receipt of payment. Consignor will provide Guernsey's reasonable access during normal working days and hours, so that Guernsey's can properly examine, photograph, catalogue, and otherwise prepare the Property for sale. Consignor agrees to make available to Guernsey's all records and documents that provide information as to the authenticity and provenance of the Property.

3. The Auction. Guernsey's and Consignor shall mutually agree as to the place and date of the sales. Guernsey's shall have absolute discretion as to a) the manner in which the sale is conducted, including the Terms and Conditions of Sale and Information to Intending Buyers then in effect or any decision to waive or modify the same, b) consulting any expert, c) the combination or division of the Property into lots as may be deemed appropriate for the sale, d) the description of the Property in promotional materials and other descriptions as we believe appropriate.

4. Commission. For its services, Guernsey's will receive and retain from the proceeds of the sales a commission from you as follows. For items offered in the live auction exclusively, and for items that are offered simultaneously in the live auction and in the real time online auction, Guernsey's commission will be based on the total hammer price of all lots of your consigned Property and calculated as follows: 18% (eighteen percent) of the first \$1,000,000 of gross sales; 15% (fifteen percent) of the total of gross sales between \$1,000,001 and \$2,000,000; 12.5% (twelve and one-half percent) of total of gross sales that exceed \$2,000,000. For items to be offered for sale exclusively online, the commission will be 19% (nineteen percent) on each lot sold. You are aware that the buyer will be paying an additional premium of 22% (twenty-two percent) of the first \$100,000 in a lot, and 15% (fifteen percent) of any amount in excess of \$100,000, and that premium in no way affects the amount due to us from you or the net amount payable to you from us after deducting our commission.

5. Settlement/Non-payment. Thirty days after the sales, we will wire you the net proceeds (gross proceeds less our commission) from the sale of the property, provided that we have received and collected payment in full from the buyer, unless the buyer has notified us of intention to rescind the sale or we have received notice of any other claim which would bear upon the validity of the sale, or have for any reason refunded such proceeds to the buyer prior to the expiration of such thirty days.

In the event of non-payment by the buyer, Guernsey's shall notify Consignor, and both parties shall decide on a mutually agreeable course of action, including canceling the sale and returning the Property to Consignor, enforcing payment by the buyer or taking any other action permitted by law. In the event that the sale is cancelled, Guernsey's will not be entitled to the commission for such sale. Guernsey's shall not, under any circumstances, be liable for any consequential damages to Consignor as a result of non-payment by the buyer.

6. Post-Auction Negotiated Sales. If a lot fails to sell at auction, although the Property will remain in your possession, you authorize us, as your exclusive agent, for a period of 90 days following the auction date to sell the lot privately for an amount which is no less than the reserve or a lesser amount that is mutually agreed upon by Guernsey's and you prior to the sale thereof. In such event, your obligations to us with respect to such lot are the same as if it had been sold at auction.

7. Insurance. Guernsey's will provide insurance, at no cost to Consignor, for Property during the time that it is under Guernsey's sole control and custody, which will include but not be limited to Property that is removed from storage and displayed at previews and at the auction, removed from Harrisburg to New York or elsewhere for purposes of promotion or media previews, etc. Guernsey's will be responsible for Property that may be damaged or lost due to Guernsey's handling. However, Guernsey's will not be responsible for insuring Property while in its present location in Harrisburg, unless access to the Property is limited to Guernsey's personnel or one or two trusted and specifically identified Harrisburg staff members.

The Property will be insured by us as specified above for an amount equal to a) the final bid price (excluding buyer's premium) if the property has been sold, or b) 100% of our latest presale low estimate if unsold.

8. Limits of Liability. Guernsey's liability to you resulting from loss of or damage to any Property shall not exceed the insurance coverage of such Property as provided in Paragraph 7 of this agreement, less our commission, and shall be limited to the time period that said Property is in our custody. While we undertake to exercise reasonable care in handling the Property, we shall not be responsible for any damage to any Property caused by changes in humidity or temperature; or inherent conditions or defects.

9. Reserves. Unless stated otherwise on the face of the annexed inventory, all Property will be sold without reserve. Where Property is subject to a reserve, the reserve price will be mutually agreed upon between Guernsey's and you and confirmed by you in writing which is received by us before the sale. Stated reserves cannot be raised but may be lowered prior to the time of sale with your prior approval. All reserves are gross (commissionable). The reserve price and printed presale estimate shall not include buyer's premium or taxes.

Guernsey's may sell any property below the reserve price, provided that we pay you, on the settlement date, the net amount which you would have been entitled to receive had the property been sold at the reserve (that is, the reserve minus our selling commission).

Under no circumstances may you, your principals, agents, nor any representative of you or your principal may bid for your Property. In the event that you breach any terms of this paragraph and you and/or your agent or representative becomes the successful bidder on your Property, then you shall pay to us a commission of 15% of the successful bid price plus the appropriate buyer's premium.

10. Representations and Warranties. You represent and warrant that you have title to the property and the right to consign the Property for sale by us and that the Property is and will until the completion of the sale by us be free and clear of all liens, claims, encumbrances of others of whatever nature and that good title and right of possession of the Property will pass to the buyer free of all such liens, claims, encumbrances of whatever nature, and that there are not and, until the completion of the sale by us, there will not be any restriction or claims against us prohibiting or restricting our right to offer the Property at auction or to photograph, reproduce photographs or exhibit the Property for sale. Consignor grants to Guernsey's the right to illustrate and photograph the Property and to use such photographs, illustrations or images at any time before or after the sale and for such purposes as Guernsey's deems appropriate.

11. Indemnification. Except to the extent prohibited or limited by Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes, titled "Matters Affecting Governmental Units," Guernsey's and Consignor agree to indemnify and hold harmless the other party from and against any and all claims, damages, losses, or expenses ("Claims"), inclusive of attorney's fees, which may be incurred by reason of the indemnifying party's material breach or alleged material breach of any of the indemnifying party's obligations, warranties or representations under this agreement in addition to any third party claims arising from the indemnifying party's errors, omissions, or other negligent conduct in performing its obligations under this Agreement.

12. Withdrawal. You may not withdraw any property after the date of this agreement without written approval from Guernsey's, which approval will not be unreasonably withheld. It is agreed that in addition to any other reasonable basis for withholding approval, Guernsey's' determination in its sole discretion that the property is a featured consignment, that the property has had left bids or expressions of interest, that the property has been promoted as part of the auction or that the aggregate value of the property for which permission is sought by the Consignor to withdraw when added to the aggregate value of property which has been withdrawn already exceeds 10 % of the aggregate value of the property consigned as reflected by presale estimates, shall be deemed acceptable reasons to deny permission to withdraw. Property excluded from sale because it is subject to a law prohibiting its sale pursuant to Paragraph 13 shall not be considered when calculating this figure.



We reserve the right to withdraw any Property from the Auction at any time if we reasonably believe (a) there is a doubt as to its attribution or to its authenticity, or (b) for any other just cause. Guernsey's may through consultation with and approval of the Consignor determine that the Property is not suitable for auction. If Guernsey's elects not to auction an item, Guernsey's shall bear the cost of its return to Consignor.

13. Right to Review. After the items have been catalogued, but prior to the date of auction, the Consignor reserves the right to conduct an independent review of such items to determine whether they are subject to any laws forbidding their sale. In the event that the Consignor determines, in its sole discretion, that the Consignor is prohibited from selling any item, the Consignor may withdraw such item without being held liable for breach of the terms of this Agreement. The Consignor warrants and represents that the persons executing this Agreement have full legal authority to do so and that upon execution this shall be a final a binding agreement. Consignor further represents and warrants that to the best of its knowledge there are no laws or regulations or other limitations, with the exception of the Native American Graves Protection and Repatriation Act which would prohibit the consignment of the Property or any item thereof. This provision supersedes any and all conflicting terms of the Agreement.

14. Estimates, Property Descriptions. Except to the extent that errors or omissions constitute a gross deviation from the reasonable standard of care of an auctioneering business providing the services contemplated in this agreement, Guernsey's is not liable to Consignor for any errors or omissions in the promotional material or other descriptions of the Property, and we make no guarantees, representations or warranties whatsoever to you with respect to the Property, its authenticity, condition, value, selling price or otherwise. Our presale estimates, subject to revision by us at our sole discretion, are intended as a guide for prospective bidders only. We make no representation or warranty, written or oral, of the anticipated selling price or value of any Property and no estimate may be relied upon as a prediction of the actual selling price.

15. Rescission. Although the Property will be advertised as being sold "as is" and all buyers made specifically aware of this "as is" sale status, Guernsey's nevertheless is authorized, as your agent, to rescind the sale of any Property at any time if, in our sole judgment, we determine that the offering for sale of any Property has subjected or may subject Guernsey's and/or you to any liability, including any liability under warranty of authenticity or title. In such event, we are further authorized to refund or credit to the buyer the purchase price of such returned Property rather than remit the net proceeds to you. If Guernsey's has already remitted to you any proceeds of the rescinded sale, you shall pay us on request an amount equal to the remitted proceeds.

16. Unsold Property. Any Property remaining unsold for any reason will be retained by you, but will continue to be made available for post-auction sale, as specific in Paragraph 6 above.

17. Default. In the event of the default by either party of any of the terms herein, the non-defaulting party reserves any and all rights it has at law or equity in addition to the rights herein.

18. Entire Agreement. All prior negotiation, representations, contracts or agreements, if any, between the parties hereto relating to the Property consigned, are hereby merged into this agreement and this agreement is the complete, entire and sole agreement between the parties. No modification, alteration, construction, amendment or rescission of or to this agreement shall be effective or binding unless in writing and executed by duly authorized officer of Guernsey's and you. This agreement is binding upon your heirs, executors, beneficiaries, successors, and assigns. However, you may not assign this agreement without prior written consent.

19. Controlling law. This agreement is entered into pursuant to Pennsylvania law, and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

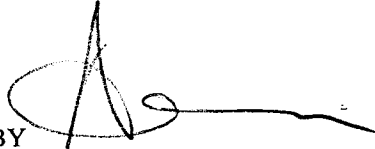
20. Disputes. In the event a dispute between the parties arises from this agreement, it is agreed that the party initiating legal action would be required to bring such action in a court of competent jurisdiction within the Commonwealth of Pennsylvania.

21. Miscellaneous. The paragraph headings contained herein are for convenience of reference only and shall not be construed to affect in meaning the provisions of this agreement.

Please confirm your agreement with the foregoing by dating, signing and returning to us a duplicate copy of this agreement.



AGREED TO AND ACCEPTED BY:

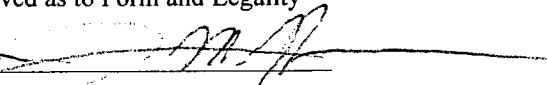
BY 
GUERNSEY'S
A Division of Barlan Enterprises, Ltd.

SIGNED _____

DATED: 2/15/13

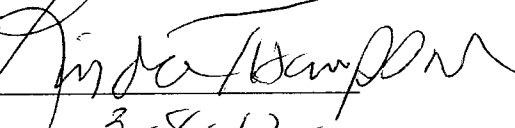
CITY OF HARRISBURG

Approved as to Form and Legality

By: 

Date: 3-7-12

Mayor

By: 

Date: 3-8-12

City Controller

By: 

Date: 2-8-13

