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Jordan D. Weiss, Esq.

**Hearing Date: April 27, 2017 at 11:00 a.m.**  
**Objections Due: April 20, 2017 by 5:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 11

SIRGOLD, INC.,

Case No.: 16-12963 (SCC)

Debtor.  
-----X

**NOTICE OF HEARING ON CHAPTER 11 TRUSTEE’S MOTION FOR ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. §§ 105(A), 363 AND 704 AND RULES 2002, 6004, 9006 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING PUBLIC AUCTION SALE OF THE DEBTOR’S INTEREST IN REAL PROPERTIES LOCATED AT: (A) 62 WEST 47TH STREET, UNITS 309 AND 309A, NEW YORK, NEW YORK 10036; AND (B) 22 MERIDIAN ROAD, UNIT 11, EDISON, NEW JERSEY 08820; (II) SCHEDULING A HEARING TO CONFIRM THE RESULTS OF SUCH SALES TO THE HIGHEST OR BEST BIDDER(S); (III) APPROVING CERTAIN TERMS AND CONDITIONS OF SALE; AND (IV) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE**, that on **April 27, 2017 at 11:00 a.m.**, or as soon thereafter as counsel may be heard, a hearing shall be held at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 623, New York, New York 10004 (the “Court”) before the Honorable Shelley C. Chapman, United States Bankruptcy Judge on the motion (the “Motion”) of Salvatore LaMonica, as Chapter 11 Trustee (the “Trustee”) of the estate of Sirgold, Inc. (the “Debtor”), by his attorneys, LaMonica Herbst & Maniscalco, LLP, seeking the entry of an Order pursuant to 11 U.S.C. §§ 105(a), and 363 and Rules 2002, 6004, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure: (i) authorizing the sale of the Debtor’s interest in the real properties located at: (a) 62 West 47th Street, Units 309 and 309A, New York, New York 10036 (the “Manhattan Property”); and (b) 22 Meridian Road, Unit 11, Edison, New Jersey 08820 (the “New Jersey Property”, together with the Manhattan Property,

the “Real Properties”), free and clear of all liens, claims, encumbrances and interests (the “Liens”) to the highest or best bidder(s) at a public sale; (ii) approving the terms and conditions that will govern the public sale of the Real Properties; (iii) scheduling a hearing to confirm results of the public sale of the Real Properties to the highest or best bidder(s) at the public sale; and (iv) granting such other and further relief as this Court deems just and proper under the circumstances.

**PLEASE TAKE FURTHER NOTICE**, that objections to the relief requested in the Motion, if any, must be in writing, conform with the Bankruptcy Code and Rules, state with particularity the grounds therefor and be filed with the Court, with a courtesy copy to the Chambers of the Honorable Shelley C. Chapman, United States Bankruptcy Judge, and served upon, so as to be received by, LaMonica Herbst & Maniscalco, LLP, the attorneys for the Trustee, Attn: Jordan D. Weiss, Esq., no later than **April 20, 2017 by 5:00 p.m.**, as follows: (i) through the Bankruptcy Court’s electronic filing system, which may be accessed through the internet at the Bankruptcy Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), in portable document format (PDF) using Adobe Exchange Software for conversion; or (ii) if a party is unavailable to file electronically, such party shall submit the objection in PDF format on a diskette in an envelope with the case name, case number, type and title of document, document number to which the objection refers and the file name on the outside of the envelope.

Dated: April 3, 2017  
Wantagh, New York

**LaMONICA HERBST & MANISCALCO, LLP**  
Counsel to Salvatore LaMonica, as Chapter 11 Trustee

By: s/ Gary F. Herbst  
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**CHAPTER 11 TRUSTEE’S MOTION FOR ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. §§ 105(a), 363 AND 704 AND RULES 2002, 6004, 9006 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING PUBLIC AUCTION SALE OF THE DEBTOR’S INTEREST IN REAL PROPERTIES LOCATED AT: (A) 62 WEST 47TH STREET, UNITS 309 AND 309A, NEW YORK, NEW YORK 10036; AND (B) 22 MERIDIAN ROAD, UNIT 11, EDISON, NEW JERSEY 08820; (II) SCHEDULING A HEARING TO CONFIRM THE RESULTS OF SUCH SALES TO THE HIGHEST OR BEST BIDDER(S); (III) APPROVING CERTAIN TERMS AND CONDITIONS OF SALE; AND (IV) GRANTING RELATED RELIEF**

Salvatore LaMonica, as Chapter 11 Trustee (the “Trustee”) of the estate of Sirgold, Inc. (the “Debtor”), by his counsel, LaMonica Herbst & Maniscalco, LLP, submits this motion (the “Motion”) seeking the entry of an Order pursuant to 11 U.S.C. §§ 105(a), and 363 and Rules 2002, 6004, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure: (i) authorizing the sale of the Debtor’s interest in the real properties located at: (a) 62 West 47th Street, Units 309 and 309A, New York, New York 10036; and (b) 22 Meridian Road, Unit 11, Edison, New Jersey, free and clear of all liens, claims, encumbrances and interests (the “Liens”) to the highest or best bidder(s) at a public sale; (ii) approving the terms and conditions that will govern the public sale of the Real Properties (the “Terms and Conditions of Sale”); (iii) scheduling a hearing to confirm results of the public sale of the Real Properties to the highest or best bidder(s)

at the public sale; and (iv) granting such other and further relief as this Court deems just and proper under the circumstances, and respectfully sets forth as follows:

**JURISDICTION, VENUE AND STATUTORY PREDICATES**

1. This Court has jurisdiction to consider the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein include 11 U.S.C. §§ 105(a), and 363(b), (f), and (m) (the “Bankruptcy Code”) and Rules 2002, 6004, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**BACKGROUND**

4. On October 21, 2016 (the “Petition Date”), an involuntary petition (the “Involuntary Petition”) for relief pursuant to chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) was filed against the Debtor by petitioning creditors.

5. On November 14, 2016, the Debtor, in answer to the Involuntary Petition, filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

6. On November 17, 2016, the Court so-ordered a stipulation providing for the voluntary conversion of the Debtor’s case to one under chapter 11 of the Bankruptcy Code.

7. On January 27, 2017, Salvatore LaMonica was appointed as Chapter 11 Trustee.

**The Manhattan Property**

8. As of the Petition Date, the Debtor was the fee owner of commercial condominium unit located at and known as 62 West 47th Street, Units 309 and 309A, New York, New York 10036 and designated Block 1262 Lot 309 (the “Manhattan Property”).

9. Pursuant to a deed dated August 14, 2006, and recorded September 27, 2006, the Debtor purchased the Manhattan Property for the sum of \$700,000.00.

10. Pursuant to a mortgage dated August 17, 2006, and recorded on September 27, 2006, the Debtor granted a mortgage secured against the Manhattan Property in favor of Unity Bank in the principal amount of \$570,000.00 (the "Manhattan Mortgage").

11. According to the Debtor's schedules, the outstanding balance on the Manhattan Mortgage is \$388,491.05. Upon information and belief, the actual amounts outstanding are somewhat greater, however the scheduled amounts are approximately accurate.

12. Upon information and belief, there is a lien against the Manhattan Property in the amount of \$79.18 for unpaid taxes.

13. Further, as of the Petition Date, according to the Debtor's schedules, the Board of Managers of the Diamond and Jewelry Industry Commercial Condominium held a lien against the Manhattan Property in the amount of \$36,688.26.

14. As of the Petition Date, according to the Debtor's schedules, the fair market value of the Manhattan Property was \$945,000.00.

15. As of the Petition Date, Unit 309 of the Manhattan Property was rented, and the rental term has not expired. As of the Petition Date, the Debtor occupied Unit 309A. The Manhattan Property will be sold subject to the current tenancy in Unit 309, however, Unit 309A shall be delivered vacant.

### **The New Jersey Property**

16. As of the Petition Date, the Debtor was the fee owner of commercial condominium unit located at and known as 22 Meridian Road, Unit 11, Edison, New Jersey

08820 and designated Block 546.NN, Lot 18 C0011 (the “New Jersey Property”, together with the Manhattan Property, the “Real Properties”).

17. Pursuant to a deed dated October 26, 2005, and recorded on November 29, 2005, the Debtor purchased the New Jersey Property for the sum of \$268,000.00.

18. Pursuant to a mortgage dated October 26, 2005, and recorded on November 29, 2005, the Debtor granted a mortgage secured against the New Jersey Property in favor of Unity Bank in the principal amount of \$210,000.00 (the “New Jersey First Mortgage”).

19. Pursuant to a mortgage dated August 17, 2006, and recorded on September 15, 2006, the Debtor granted a subordinate, second mortgage against the New Jersey Property in favor of Unity Bank in the principal amount of \$570,000.00 (the “New Jersey Second Mortgage”).

20. The Manhattan Mortgage and New Jersey Second Mortgage were both granted in connection with a mortgage note (the “Note”) dated August 17, 2006.

21. According to the Debtor’s schedules, the outstanding balance on the New Jersey First Mortgage, as of the Petition Date, is \$134,234.32 and the amount outstanding on the New Jersey Second Mortgage is \$388,491.05. Upon information and belief, the actual amounts outstanding are somewhat greater, however the scheduled amounts are approximately accurate.

22. Additionally, upon information and belief, there are liens against the New Jersey Property in the amount of \$21.52 and \$5,725.16, each for unpaid taxes.

23. Further, as of the Petition Date, according to the Debtor’s schedules, the HN Plaza Condominium Association, Inc. held a lien against the New Jersey Property in the amount of \$2,250.00.

24. As of the Petition Date, according to the Debtor's schedules, the fair market value of the New Jersey Property \$250,000.00.

25. By Order of the Court, dated March 27, 2017 [Dkt. No. 95], the Trustee has retained Maltz Auctions, Inc., d/b/a Maltz Auctions ("Maltz"), as the Trustee's broker to market the Real Properties and conduct the Auction Sale of the Real Properties.

26. According to Maltz, the actual fair market value of the Real Properties is less than the amounts reflected in the Debtor's schedules, but is likely greater than the total amount of liens against the Real Properties.

27. The Trustee believes that it is in the best interests of the estate and its creditors to move forward with a public sale of the Real Properties. Subject to this Court's approval, the Trustee will include the Real Properties in a multi-property public auction to be conducted by Maltz on May 24, 2017 at 11:00 a.m., to be held at the NY LaGuardia Airport Marriott Hotel, 102-05 Ditmars Boulevard, East Elmhurst, NY 11369 (the "Public Sale").

28. Maltz will actively market the Public Sale of the Real Properties. Maltz's marketing campaign has included or will include, among other things, direct telephone and fax solicitation, internet advertising, newspaper, trade publication and/or journal advertising. Maltz has designed a specific web page for the Public Sale and placed it on its corporate website and has been or will be communicating with parties who have expressed an interest in the Real Properties.

29. In order to facilitate the Public Sale of the Real Properties, the Trustee prepared the Terms and Conditions of Sale for the Manhattan Property, annexed as Exhibit "A", and for the New Jersey Property, annexed as Exhibit "B", which, subject to the Court's approval, will govern the submission of competing offers at the Public Sale. The Trustee submits that the

proposed Terms and Conditions of Sale are customary, reasonable and in the best interests of the Debtor's estate and its creditors.

30. Briefly, the salient provisions of the proposed Terms and Conditions of Sale are as follows:

- a. The Real Properties will be offered for sale.
- b. Prior to the commencement of the Public Sale, bidders must deposit \$65,000.00 to bid on the Manhattan Property and \$25,000.00 to bid on the New Jersey Property.
- c. Within forty-eight (48) hours of the Public Sale, the successful bidder(s) must post an amount equal to 10% of the accepted highest or best bid(s) at the Public Sale, plus a 5% buyer's premium with the Trustee.
- d. The successful bidder(s) must close on the Real Properties within thirty (30) days from the entry of an Order approving the Trustee's sale of the Real Properties to the successful bidder(s).
- e. The Real Properties are being sold "AS IS" "WHERE IS", "WITH ALL FAULTS", without any representations, covenants, guarantees or warranties of any kind or nature and free and clear of all Liens, with any such Liens to attach to the proceeds from the sale.

*See Exhibits A and B.* The precise terms and conditions are fully set forth in the Terms and Conditions of Sale annexed as Exhibits A and B. Interested parties are encouraged to read the Terms and Conditions of Sale.

31. In accordance with Bankruptcy Rules 6004(a) and (c) and 2002(a)(2), the Trustee will cause a Notice of Intended Sale (the "Sale Notice") to be served on the following parties: (a) all known holders of Liens against the Real Properties; (b) the Office of the United States Trustee; (c) the Debtor's counsel; (d) the Debtor's known creditors; (e) the Debtor's tenant at the Manhattan Property; (f) all government agencies and taxing authorities required to receive notice of proceedings under the Bankruptcy Rules; (g) all parties that have filed a notice of appearance in this case; and (h) all parties that expressed an interest in the Real Properties to the Trustee or



his professionals. The Sale Notice will, among other things, advise all interested parties of the Public Sale date, time and location.

32. At the conclusion of the Public Sale and subject to Court approval, the Trustee will determine, in his sole business judgment, the highest or best offer(s) for the Real Properties. The Trustee respectfully requests that a hearing to confirm the results of the Public Sale be scheduled (the “Sale Confirmation Hearing”).

### **RELIEF REQUESTED AND BASIS FOR RELIEF REQUESTED**

33. By this Motion, the Trustee requests the entry of an order authorizing the sale of the Real Properties pursuant to Bankruptcy Code §§ 105(a) and 363, to sell the Debtor’s interest in the Real Properties, free and clear of all Liens, if any, pursuant to the Terms and Conditions of Sale.

#### **I. The Public Sale of the Real Properties Should be Approved**

34. Bankruptcy Code § 363(b) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, . . . .” 11 U.S.C. § 363(b)(1). Although Bankruptcy Code § 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets, the United States Court of Appeals for the Second Circuit, in applying this section, has required that it be based upon the sound business judgment of the trustee. *See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 466 (2d Cir. 2007) (quoting *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 145 (2d Cir. 1993); *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65, 83 (S.D.N.Y. 2010)

(“The overriding consideration for approval of a Section 363 sale is whether a ‘good business reason’ has been articulated.” (citations omitted)).

35. The terms of such sale are also generally within the sound discretion of the trustee. *See In re Dial-A-Mattress Operating Corp.*, Case No. 1-09-41966 (dem), 2009 Bankr. LEXIS 1801, at \*12 (Bankr. E.D.N.Y. June 24, 2009) (explaining courts “generally will defer to the business judgment of the debtor’s management” (citations omitted)); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670 (Bankr. S.D.N.Y. 1989) (approving sale of debtor’s airline shuttle assets where the debtor articulated a compelling business reason for the sale and the price represented fair value and evidenced exercise of independent good faith and non-coerced business judgment).

36. Under Bankruptcy Rule 6004(f)(1), “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). In practice, the preferred method is to conduct an auction because an auction will most often result in a greater number of potential bidder(s) in the shortest amount of time.

37. Here, the Trustee is exercising sound business judgment by selling the Real Properties at the proposed Public Sale. The Trustee has determined that the proposed Public Sale will ensure that the highest and best offer is received for the Real Properties.

38. The Real Properties are commercial condominium units located in the Diamond District of Manhattan and Edison, New Jersey. Maltz has been and/or will be actively marketing the Real Properties and the Public Sale. The Public Sale will ensure that all interested parties have the opportunity to bid on the Real Properties and the Debtor’s bankruptcy estate will thereby benefit by securing the highest and best offer for the Real Properties.

39. In order to advertise the Public Sale, and as set forth above, the Trustee will cause copies of the Sale Notice to be served upon all interested parties in these cases. As further set forth above, Maltz will continue marketing the Public Sale by, among other things, direct telephone and fax solicitation, internet advertising, newspaper, trade publication and/or journal advertising, and other such marketing methods as may be necessary in order to properly market the Real Properties.

40. The Trustee believes that there will be ample notice of the Public Sale in order to encourage active bidding and to achieve the highest and best offers for the Real Properties.

41. For these reasons, the Trustee respectfully requests that he be authorized to proceed with the Public Sale.

## **II. The Real Properties Should Be Sold Free And Clear Of Liens**

42. The Trustee seeks approval of the sale of the Real Properties free and clear of all Liens.

43. Property may be sold outside the ordinary course of business under Bankruptcy Code § 363(b), free and clear of all liens, claims and encumbrances under Bankruptcy Code § 363(f), only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

44. Accordingly, a trustee may sell property of a bankruptcy estate outside the ordinary court of business if one of the five conditions under Bankruptcy Code § 363(f) is satisfied. *See In re Grubb & Ellis Co.*, Case No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at \*31 (Bankr. S.D.N.Y. Mar. 27, 2012) (discussing Bankruptcy Code § 363(f)); *In re Borders Group, Inc.*, 453 B.R. 477, 483–84 (Bankr. S.D.N.Y. 2011) (discussing Bankruptcy Code § 363(f)).

45. Here, the Trustee believes that the fair market value of the Real Properties exceeds any Liens against the Real Properties. However, all potential holders of Liens will be provided with notice of the Public Sale vis-à-vis the notice of sale and will have an opportunity to object to the relief requested in this Motion and any such entity that does not object to the sale shall be deemed to have consented. *See, e.g., Futuresource LLC v. Reuters, Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (standing for the proposition that the lack of an objection to a proposed sale of assets counts as consent); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (citing *In re Gabel*, 61 B.R. 661 (Bankr. W.D. La. 1985)). *See also In re Enron Corp.*, 2003 WL 21755006 at \*2 (AJG) (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)). Thus, to the extent any parties holding a Lien on the Real Properties fails to object to the Public Sale, the Trustee's sale of the Real Properties free and clear of all Liens satisfies Bankruptcy Code § 363(f)(2).

### **III. The Successful Bidder(s) Shall Be Entitled To 363(m) Protection**

46. Bankruptcy Code § 363(m) protects good faith purchasers at sales conducted under Bankruptcy Code § 363(b) by providing that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

47. Although the Bankruptcy Code does not define good faith, the United States Court of Appeals for the Second Circuit has provided the following definition of good faith in the context of sales under Bankruptcy Code § 363:

Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser's good faith is lost by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders. . . .

As just defined, the good-faith analysis is focused on the purchaser's conduct in the course of the bankruptcy proceedings.

Licensing by Paolo v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997) (quotations and citations omitted); *see In re Motors Liquidation*, 430 B.R. at 78 (relying on Gucci definition of good faith in this context).

48. The Trustee is selling the Real Properties at a Public Sale after the public and interested parties had notice and an opportunity to bid and the Real Properties will be extensively marketed by Maltz. After the Public Sale, the Trustee will seek to confirm the results of the sale to the highest or best bidder(s). The Trustee submits that the sale to the highest or best bidder(s) will be an arms'-length transaction and, thus, the successful bidder(s) from the Public Sale will be a good faith purchaser of the Real Properties.

49. Accordingly, the Trustee respectfully requests the successful bidder(s) be afforded the protections under Bankruptcy Code § 363(m).

#### **IV. Waiver of Stay**

50. Under Bankruptcy Rule 6004(h), orders authorizing the sale of a debtor's assets under Bankruptcy Code § 363(b) are "stayed until the expiration of 14 days after entry of the order" authorizing such sale. FED. R. BANKR. P. 6004(h). Bankruptcy Rule 6006(d) similarly provides that orders authorizing the assignment of an unexpired lease under Bankruptcy Code § 365(f) are stayed for 14 days, unless the court orders otherwise. FED. R. BANKR. P. 6006(d).

51. A waiver of the stay requirement under Bankruptcy Rule 6004(h) will relieve the Debtor's estate of any financial burdens associated with the Real Properties and reduce the expenditure of additional funds to maintain the Real Properties. Additionally, such a stay could further delay the date that a new owner can take possession and control of the Real Properties and thus could chill the sale. Conversely, the waiver of the stay will allow for a smoother transition for the new owner and unburden the Trustee and the estate from any obligations arising from the Real Properties.

52. For these reasons, the Trustee respectfully requests that the Court waive the requirement under Bankruptcy Rule 6004(h).

#### **V. Notice and No Prior Request**

53. Bankruptcy Rule 2002(a) requires that notice of motions under Bankruptcy Code § 363(b) be given to "the debtor, the trustee, all creditors and indenture trustees . . ." Fed. R. Bankr. P. 2002(a). Bankruptcy Rule 2002(c)(1) directs that notices of proposed sales of property of the estate "shall include the time and place of any Auction, . . . and the time fixed for filing objections." Fed. R. Bankr. P. 2002(c)(1).

54. The Trustee intends to serve this Motion by first class mail on: (a) all known holders of Liens against the Real Properties; (b) the Office of the United States Trustee; (c) the

Debtor's counsel; (d) the Debtor's known creditors; (e) the Debtor's tenant at the Manhattan Property; (f) all government agencies and taxing authorities required to receive notice of proceedings under the Bankruptcy Rules; (g) all parties that have filed a notice of appearance in this case; and (h) all parties that expressed an interest in the Real Properties to the Trustee or his professionals. The Trustee submits that such notice is sufficient, such notice complies with Bankruptcy Rule 2002(c) and that no further notice is required.

55. Pursuant to Bankruptcy Rule 9014, the Trustee proposes that objections, if any, to the Motion must be in writing, filed on the date set forth by the Court, conform with the Bankruptcy Rules and the Local Rules of the Court and must be filed with the Court. The Trustee requests that the failure of any objecting person or entity to timely file its objection, and in accordance with these requirements, shall act as a bar to the assertion of any objection to the Motion and to the Trustee's sale of the Real Properties.

56. The Trustee has not previously sought this relief from this or any other Court.

57. For all the foregoing reasons, the relief requested herein is appropriate and in the best interest of all interested parties, the estate and its creditors.

**WHEREFORE**, the Trustee requests that the Court enter an Order: (i) authorizing the Trustee to proceed with the Public Sale of the Debtor's interest in the Real Properties; (ii) approving the Terms and Conditions of Sale; (iii) scheduling the Sale Confirmation Hearing; and (iv) granting the Trustee such other and further relief as this Court deems just and proper under the circumstances.

Dated: April 3, 2017  
Wantagh, New York

**LaMONICA HERBST & MANISCALCO, LLP**  
Counsel to Salvatore LaMonica, as Chapter 11 Trustee

By: s/ Gary F. Herbst  
Gary F. Herbst, Esq.  
Jordan D. Weiss, Esq.  
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(516) 826-6500



# EXHIBIT A

**TERMS AND CONDITIONS OF SALE**

**PURSUANT TO AN ORDER OF THE HONORABLE SHELLY C. CHAPMAN, THE DEBTOR'S INTEREST IN THE REAL PROPERTY LOCATED AT 62 WEST 47TH STREET, UNITS 309 AND 309A, NEW YORK, NEW YORK 10036, IS TO BE SOLD AT PUBLIC SALE ON MAY 24, 2017 AT 11:00 A.M.**

1. On October 21, 2016 (the "Petition Date"), an involuntary petition (the "Involuntary Petition") for relief pursuant to chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") was filed against the Debtor by petitioning creditors.

2. On November 14, 2016, the Debtor, in answer to the Involuntary Petition, filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

3. On November 17, 2016, the Court so-ordered a stipulation providing for the voluntary conversion of the Debtor's case to one under chapter 11 of the Bankruptcy Code.

4. On January 27, 2017, Salvatore LaMonica was appointed as Chapter 11 Trustee (the "Trustee").

5. The Debtor is the record owner of a commercial condominium unit located at 62 West 47th Street, Units 309 and 309A, New York, New York 10036 (the "Manhattan Property").

6. These Terms and Conditions of Sale are promulgated in connection with the Bankruptcy Court-authorized public sale of the estate's interest in the Manhattan Property (the "Public Sale"). The Public Sale shall be conducted by Maltz Auctions, Inc., d/b/a Maltz Auctions ("Maltz"), the Trustee's Bankruptcy Court retained estate broker, for the sale contemplated herein.

7. The Trustee is represented by LaMonica Herbst & Maniscalco, LLP ("LH&M"), with offices at 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793.

8. The Public Sale will be held on May 24, 2017 at 11:00 a.m. (the "Sale Date") at the NY LaGuardia Airport Marriott Hotel, 102-05 Ditmars Boulevard, East Elmhurst, NY 11369.

9. The Successful Purchaser (as hereinafter defined) of the Manhattan Property, will, at the time and place of the conclusion of the Public Sale, sign a memorandum of sale (the "Memorandum of Sale") in accordance with these Terms and Conditions of Sale.

10. In order to be permitted to bid on the Manhattan Property, prior to the commencement of the Public Sale, every prospective bidder (each a "Bidder") must deliver to Maltz a bank check made payable to "Salvatore LaMonica, Esq., as Trustee" in the amount of Sixty-five Thousand Dollars (\$65,000.00) (the "Qualifying Deposit"), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as the Trustee determines to have made the highest or best bid for the Manhattan Property (the "Successful Purchaser").

11. The Successful Purchaser and the competing Bidder who the Trustee determines to have made the second highest or best bid for the Manhattan Property (the "Second Highest Bidder") must execute, and thereby agree to be bound by these Terms and Conditions of Sale and the Memorandum of Sale. At the conclusion of the Public Sale, Maltz will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser and the Second Highest Bidder. The Second Highest Bidder's Qualifying Deposit shall be returned within two (2) business days following approval of the Public Sale by the Bankruptcy Court ("Court Approval Date").

12. Within 48 hours after conclusion of the Public Sale, the Successful Purchaser shall deliver to the Trustee by bank check made payable to "Salvatore LaMonica, Esq., as Trustee" an amount equal to 10% of the high bid realized at the Public Sale, minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"), plus a 5% Buyer's Premium (as hereinafter defined).

13. The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Public Sale. Failure of the Successful Purchaser to tender the 10% Deposit of the high bid and the Buyer's Premium within 48 hours after conclusion of the Public Sale shall result in an immediate default under the terms of these Terms and Conditions of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid, including the Qualifying Deposit and Buyer's Premium.

14. Pursuant to an Order of the Bankruptcy Court, the Successful Purchaser, and the Second Highest Bidder in the event of a Successful Purchaser's Default (as hereinafter defined), are solely responsible to pay Maltz five percent (5%) of the high bid at the Public Sale (the "Buyer's Premium"). The sum of the high bid at the Public Sale and the Buyer's Premium is defined herein as the "Purchase Price").

15. Neither the Trustee, Trustee's counsel, Maltz, nor the Estate is liable or responsible for the payment of fees of any third party broker. The only commissions that the Estate may be liable for are those of Maltz which has been retained pursuant to an Order of the Bankruptcy Court, and those of the Trustee.

16. The Successful Purchaser must close title to the Manhattan Property at a date that is no more than thirty (30) days after the Court Approval Date, **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended solely by the Trustee (the "Successful Purchaser's Closing"). The Successful Purchaser must pay the balance of the Purchase Price for the Manhattan Property to the Trustee by bank check in immediately available federal funds at or prior to the Successful Purchaser's Closing.

17. If the Successful Purchaser fails to post the total required 10% Deposit and 5% Buyer's Premium within 48 hours following the Public Sale or if the Successful Purchaser fails to tender the Purchase Price to the Trustee at or prior to the Successful Purchaser's Closing ("Successful Purchaser's Default"), the Trustee, in his sole and absolute discretion, may deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale and Memorandum of Sale as the new Successful Purchaser (the "New Successful

Purchaser”). The New Successful Purchaser shall not receive credit for any Deposit and/or Buyer’s Premium forfeited by the initial Successful Purchaser.

18. The new Successful Purchaser must close title to the Manhattan Property at the later of a date: (a) no more than thirty (30) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser’s Default; or (ii) no more than thirty (30) days after the Court Approval Date (the “New Successful Purchaser’s Closing” and, together with the Successful Purchaser’s Closing, the “Closing”), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by the Trustee.

19. The Successful Purchaser, or the New Successful Purchaser as the case may be, has seven (7) days from the Court Approval Date to order title, copy of which shall promptly be provided to LH&M. The Successful Purchaser, or the New Successful Purchaser as the case may be, has fourteen (14) days from the Court Approval Date to advise the Trustee through LH&M (by electronic mail to [jw@lhmlawfirm.com](mailto:jw@lhmlawfirm.com) and [gfh@lhmlawfirm.com](mailto:gfh@lhmlawfirm.com)) of any and all title issues or defects that would in any way be an impediment to the Closing on the sale of the Manhattan Property. The failure of the Successful Purchaser, or the New Successful Purchaser as the case may be, to advise the Trustee through LH&M within fourteen (14) days from the Court Approval Date of any such title issues or defects shall be deemed a waiver of any and all rights to raise any such title issues or defects.

20. The Closing shall take place at the offices of Trustee’s counsel, LH&M, located at 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793, or such other location as the Trustee deems appropriate.

21. The Successful Purchaser, or the New Successful Purchaser as the case may be, shall pay any and all costs and expenses in connection with the transfer of the Manhattan Property including, but not limited to: fees related to obtaining a survey; fee title or mortgage insurance; title company endorsement, search and escrow charges; appraisals, reports and other costs of property due diligence; and County, State, New York City, or other property transfer, flip tax, deed or documentary tax, or other taxes imposed upon the sale due in connection with the transfer of the Manhattan Property from the Trustee at Closing. The Trustee shall not be required to execute any form of title affidavit (but may in his sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser or the New Successful Purchaser as the case may be, acknowledges that it will be responsible for the preparation of all required ACRIS forms and/or any transfer tax forms.

22. In connection with the Closing and Closing date, the Successful Purchaser, or the New Successful Purchaser as the case may be, is hereby given notice that **TIME IS OF THE ESSENCE against the Successful Purchaser, or the New Successful Purchaser as the case may be, and the failure of the Successful Purchaser, or the New Successful Purchaser as the case may be, to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price at the Closing, will result in an immediate forfeiture of the Deposit and Buyer’s Premium and the termination of the Successful Purchaser’s, or the New Successful Purchaser’s as the case may be, right to**

**acquire the Manhattan Property under these Terms and Conditions of Sale and the Memorandum of Sale.**

23. The Successful Purchaser, or the New Successful Purchaser as the case may be, shall be obligated to close title to the Manhattan Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Successful Purchaser, or the New Successful Purchaser as the case may be, to cancel or avoid their obligations under these Terms of and Conditions of Sale and the Memorandum of Sale, other than the Trustee's inability to deliver insurable title to the Manhattan Property. Further, the Successful Purchaser, or the New Successful Purchaser as the case may be, shall have demonstrated, to the satisfaction of the Trustee, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale. The Trustee reserves the right to reject any Purchaser or Bidder who the Trustee believes, in his sole discretion, is not financially capable of consummating the purchase of the Manhattan Property.

24. The Trustee and his professionals have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Manhattan Property or the Public Sale that might be pertinent to the purchase of the Manhattan Property, including, without limitation: (a) the current or future estate tax liability, assessment or valuation of the Manhattan Property; (b) the potential qualification of the Manhattan Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (c) the compliance or non-compliance of the Manhattan Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the Manhattan Property; (d) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Manhattan Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (e) the current or future use of the Manhattan Property; (f) the current or future rents, other operating incomes or expenses; (g) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; and/or (h) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the Manhattan Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the Manhattan Property. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. The Trustee and his professionals shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Manhattan Property, made or furnished by the Trustee or his Professionals. Unit 309A of the Manhattan Property shall be delivered vacant of tenancies at Closing. Unit 309 of the Manhattan Property is subject to the current tenant's tenancy; copies of the current tenant's lease will be made available

25. The Manhattan Property is being sold **"AS IS," "WHERE IS," "WITH ALL FAULTS,"** without any representations, covenants, guarantees or warranties of any kind or

nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed as of October 21, 2016, and sale of the Manhattan Property is subject to, among other things: (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; (e) all leases, if any, as may exist or encumber the Manhattan Property; and (f) environmental conditions; provided, however, the Manhattan Property shall be delivered free and clear of any and all monetary liens. By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect the Manhattan Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the Manhattan Property in making their bids. Neither the Trustee nor any of his professionals make any representations or warranties with respect to the permissible uses of the Manhattan Property including, but not limited to, the zoning of the Manhattan Property. All Bidders acknowledge that they have conducted their own due diligence in connection with the Manhattan Property and are not relying on any information provided by the Trustee or his professionals. The Manhattan Property will be sold subject to any and all violations requiring corrective action. By delivering their respective Qualifying Deposits, all Bidders expressly acknowledge that the sale of the Manhattan Property shall be subject to any claims by any tenant in connection with the amount of that tenant's security deposit.

26. The Trustee shall convey the Manhattan Property by delivery of a Trustee's Deed. The quality of title shall be that which any reputable title insurance company authorized to do business in the State of New York is willing to approve and insure. If the Successful Purchaser, or the New Successful Purchaser as the case may be, is unable to obtain title insurance, subject to the permissible exceptions contained herein, the Trustee may, at his option, arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Purchaser, or the New Successful Purchaser as the case may be.

27. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the Bankruptcy Code or otherwise interfere with the jurisdiction of the Bankruptcy Court.

28. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Trustee or by the Court. The Trustee reserves the right to modify these Terms and Conditions of Sale at any time before or after the Public Sale.

29. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference, at the Public Sale of the Manhattan Property. By making a bid for the Manhattan Property, all Purchasers will be deemed to have acknowledged having read and understood these Terms and Conditions of Sale and have agreed to be bound by them.

30. If the Trustee is unable to deliver the Manhattan Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, the Trustee's and the estate's only obligation will be to refund the Deposit and Buyer's Premium, without interest, to the Successful Purchaser, or the New Successful Purchaser as the case may be, and upon such refund, the Successful Purchaser, or the New Successful Purchaser as the case may be, will have no

claim or recourse against the Trustee, his professionals or the estate and shall have no further rights under these Terms and Conditions of Sale or Memorandum of Sale.

31. The Public Sale of the Manhattan Property is subject to confirmation by the Trustee and pursuant to a further order of the Bankruptcy Court confirming the Public Sale.

32. The Bankruptcy Court shall determine any disputes concerning the Public Sale of the Manhattan Property. By participating in the Public Sale, all Purchasers consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor's pending case.

33. The Successful Bidder shall provide any and all information requested by the condominium board of managers for the Manhattan Property and execute any and all documents reasonably requested by the condominium board.

I have read these Terms and Conditions of Sale and agree to be bound by them.

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

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

**MEMORANDUM OF SALE – SUCCESSFUL PURCHASER**

High Bid Realized at Public Sale: \_\_\_\_\_

5% Buyer’s Premium: \_\_\_\_\_

**Purchase Price:** \_\_\_\_\_

The undersigned has this \_\_\_ day of \_\_\_\_\_ 2017 agreed to purchase the property located at 62 West 47th Street, Units 309 and 309A, New York, New York 10036 (the “Manhattan Property”) of debtor Sirgold, Inc. (the “Debtor”) and sold by Salvatore LaMonica, the Chapter 11 Trustee of the Debtor, for the sum of \$\_\_\_\_\_ DOLLARS and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of the Manhattan Property and this Memorandum of Sale.

\_\_\_\_\_  
SUCCESSFUL PURCHASER (Signature)

\_\_\_\_\_  
SUCCESSFUL PURCHASER (Signature)

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
EMAIL ADDRESS

Received from \_\_\_\_\_ the sum of \$65,000.00 DOLLARS, as a non-refundable deposit for the purchase of the Manhattan Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price in the above sale was for the sum of \$\_\_\_\_\_.

\_\_\_\_\_  
MALTZ AUCTIONS, INC., d/b/a MALTZ AUCTIONS

**SUCCESSFUL PURCHASER ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_



**MEMORANDUM OF SALE – SECOND HIGHEST BIDDER**

Bid Realized at Public Sale: \_\_\_\_\_

5% Buyer’s Premium: \_\_\_\_\_

**Purchase Price:** \_\_\_\_\_

The undersigned has this \_\_\_ day of \_\_\_\_\_ 2017 agreed to purchase the property located at 62 West 47th Street, Units 309 and 309A, New York, New York 10036 (the “Manhattan Property”) of debtor Sirgold, Inc. (the “Debtor”) and sold by Salvatore LaMonica, the Chapter 11 Trustee of the Debtor, for the sum of \$ \_\_\_\_\_ DOLLARS. In the event of the Successful Bidder’s Default and if deemed by Trustee, in his sole and absolute discretion, to hold all benefits and obligations of a Successful Purchaser under the Terms and Conditions of Sale and this Memorandum of Sale and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of said Manhattan Property and this Memorandum of Sale.

\_\_\_\_\_  
SECOND HIGHEST BIDDER (Signature)

\_\_\_\_\_  
SECOND HIGHEST BIDDER (Signature)

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
EMAIL ADDRESS

Received from \_\_\_\_\_ the sum of \$65,000.00 DOLLARS, as a non-refundable deposit for the purchase of the Manhattan Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price for the 2<sup>nd</sup> Highest Bid was in the above sale was for the sum of \$ \_\_\_\_\_.

\_\_\_\_\_  
MALTZ AUCTIONS, INC., d/b/a MALTZ AUCTIONS

**SECOND HIGHEST BIDDER ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

# EXHIBIT B

**TERMS AND CONDITIONS OF SALE**

**PURSUANT TO AN ORDER OF THE HONORABLE SHELLY C. CHAPMAN, THE DEBTOR'S INTEREST IN THE REAL PROPERTY LOCATED AT 22 MERIDIAN ROAD, UNIT 11, EDISON, NEW JERSEY 08820, IS TO BE SOLD AT PUBLIC SALE ON MAY 24, 2017 AT 11:00 A.M.**

1. On October 21, 2016 (the "Petition Date"), an involuntary petition (the "Involuntary Petition") for relief pursuant to chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") was filed against the Debtor by petitioning creditors.

2. On November 14, 2016, the Debtor, in answer to the Involuntary Petition, filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

3. On November 17, 2016, the Court so-ordered a stipulation providing for the voluntary conversion of the Debtor's case to one under chapter 11 of the Bankruptcy Code.

4. On January 27, 2017, Salvatore LaMonica was appointed as Chapter 11 Trustee (the "Trustee").

5. The Debtor is the record owner of a commercial condominium unit located at 22 Meridian Road, Unit 11, Edison, New Jersey 08820 (the "New Jersey Property").

6. These Terms and Conditions of Sale are promulgated in connection with the Bankruptcy Court-authorized public sale of the estate's interest in the New Jersey Property (the "Public Sale"). The Public Sale shall be conducted by Maltz Auctions, Inc., d/b/a Maltz Auctions ("Maltz"), the Trustee's Bankruptcy Court retained estate broker, for the sale contemplated herein.

7. The Trustee is represented by LaMonica Herbst & Maniscalco, LLP ("LH&M"), with offices at 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793.

8. The Public Sale will be held on May 24, 2017 at 11:00 a.m. (the "Sale Date") at the NY LaGuardia Airport Marriott Hotel, 102-05 Ditmars Boulevard, East Elmhurst, NY 11369.

9. The Successful Purchaser (as hereinafter defined) of the New Jersey Property, will, at the time and place of the conclusion of the Public Sale, sign a memorandum of sale (the "Memorandum of Sale") in accordance with these Terms and Conditions of Sale.

10. In order to be permitted to bid on the New Jersey Property, prior to the commencement of the Public Sale, every prospective bidder (each a "Bidder") must deliver to Maltz a bank check made payable to "Salvatore LaMonica, Esq., as Trustee" in the amount of Twenty-five Thousand Dollars (\$25,000.00) (the "Qualifying Deposit"), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing Bidder as the Trustee determines to have made the highest or best bid for the New Jersey Property (the "Successful Purchaser").

11. The Successful Purchaser and the competing Bidder who the Trustee determines to have made the second highest or best bid for the New Jersey Property (the "Second Highest Bidder") must execute, and thereby agree to be bound by these Terms and Conditions of Sale and the Memorandum of Sale. At the conclusion of the Public Sale, Maltz will return the Qualifying Deposits to all Bidders, except for the Successful Purchaser.

12. Within 48 hours after conclusion of the Public Sale, the Successful Purchaser shall deliver to the Trustee by bank check made payable to "Salvatore LaMonica, Esq., as Trustee" an amount equal to 10% of the high bid realized at the Public Sale, minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"), plus a 5% Buyer's Premium (as hereinafter defined).

13. The Buyer's Premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Public Sale. Failure of the Successful Purchaser to tender the 10% Deposit of the high bid and the Buyer's Premium within 48 hours after conclusion of the Public Sale shall result in an immediate default under the terms of these Terms and Conditions of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid, including the Qualifying Deposit and Buyer's Premium.

14. Pursuant to an Order of the Bankruptcy Court, the Successful Purchaser, and the Second Highest Bidder in the event of a Successful Purchaser's Default (as hereinafter defined), are solely responsible to pay Maltz five percent (5%) of the high bid at the Public Sale (the "Buyer's Premium"). The sum of the high bid at the Public Sale and the Buyer's Premium is defined herein as the "Purchase Price").

15. Neither the Trustee, Trustee's counsel, Maltz, nor the Estate is liable or responsible for the payment of fees of any third party broker. The only commissions that the Estate may be liable for are those of Maltz which has been retained pursuant to an Order of the Bankruptcy Court, and those of the Trustee.

16. The Successful Purchaser must close title to the New Jersey Property at a date that is no more than thirty (30) days after the Court Approval Date, **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended solely by the Trustee (the "Successful Purchaser's Closing"). The Successful Purchaser must pay the balance of the Purchase Price for the New Jersey Property to the Trustee by bank check in immediately available federal funds at or prior to the Successful Purchaser's Closing.

17. If the Successful Purchaser fails to post the total required 10% Deposit and 5% Buyer's Premium within 48 hours following the Public Sale or if the Successful Purchaser fails to tender the Purchase Price to the Trustee at or prior to the Successful Purchaser's Closing ("Successful Purchaser's Default"), the Trustee, in his sole and absolute discretion, may deem the Second Highest Bidder to hold all benefits and obligations under the Terms and Conditions of Sale and Memorandum of Sale as the new Successful Purchaser (the "New Successful Purchaser"). The New Successful Purchaser shall not receive credit for any Deposit and/or Buyer's Premium forfeited by the initial Successful Purchaser.

18. The new Successful Purchaser must close title to the New Jersey Property at the later of a date: (a) no more than thirty (30) days following receipt of written notice to the New Successful Purchaser of Successful Purchaser's Default; or (ii) no more than thirty (30) days after the Court Approval Date (the "New Successful Purchaser's Closing" and, together with the Successful Purchaser's Closing, the "Closing"), **TIME BEING OF THE ESSENCE as to the New Successful Purchaser**, although such date may be extended solely by the Trustee.

19. The Successful Purchaser, or the New Successful Purchaser as the case may be, has seven (7) days from the Court Approval Date to order title, copy of which shall promptly be provided to LH&M. The Successful Purchaser, or the New Successful Purchaser as the case may be, has fourteen (14) days from the Court Approval Date to advise the Trustee through LH&M (by electronic mail to [jw@lhmlawfirm.com](mailto:jw@lhmlawfirm.com) and [gfh@lhmlawfirm.com](mailto:gfh@lhmlawfirm.com)) of any and all title issues or defects that would in any way be an impediment to the Closing on the sale of the New Jersey Property. The failure of the Successful Purchaser, or the New Successful Purchaser as the case may be, to advise the Trustee through LH&M within fourteen (14) days from the Court Approval Date of any such title issues or defects shall be deemed a waiver of any and all rights to raise any such title issues or defects.

20. The Closing shall take place at the offices of Trustee's counsel, LH&M, located at 3305 Jerusalem Avenue, Suite 201, Wantagh, New York 11793, or such other location as the Trustee deems appropriate.

21. The Successful Purchaser, or the New Successful Purchaser as the case may be, shall pay any and all costs and expenses in connection with the transfer of the New Jersey Property including, but not limited to: fees related to obtaining a survey; fee title or mortgage insurance; title company endorsement, search and escrow charges; appraisals, reports and other costs of property due diligence; and County, State, City, or other local, or other property transfer, flip tax, deed or documentary tax, or other taxes imposed upon the sale due in connection with the transfer of the New Jersey Property from the Trustee at Closing. The Trustee shall not be required to execute any form of title affidavit (but may in his sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser or the New Successful Purchaser as the case may be, acknowledges that it will be responsible for the preparation of all required ACRIS forms and/or any transfer tax forms.

22. In connection with the Closing and Closing date, the Successful Purchaser, or the New Successful Purchaser as the case may be, is hereby given notice that **TIME IS OF THE ESSENCE against the Successful Purchaser, or the New Successful Purchaser as the case may be, and the failure of the Successful Purchaser, or the New Successful Purchaser as the case may be, to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price at the Closing, will result in an immediate forfeiture of the Deposit and Buyer's Premium and the termination of the Successful Purchaser's, or the New Successful Purchaser's as the case may be, right to acquire the New Jersey Property under these Terms and Conditions of Sale and the Memorandum of Sale.**

23. The Successful Purchaser, or the New Successful Purchaser as the case may be, shall be obligated to close title to the New Jersey Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Successful Purchaser, or the New Successful Purchaser as the case may be, to cancel or avoid their obligations under these Terms of and Conditions of Sale and the Memorandum of Sale, other than the Trustee's inability to deliver insurable title to the New Jersey Property. Further, the Successful Purchaser, or the New Successful Purchaser as the case may be, shall have demonstrated, to the satisfaction of the Trustee, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale and the Memorandum of Sale. The Trustee reserves the right to reject any Purchaser or Bidder who the Trustee believes, in his sole discretion, is not financially capable of consummating the purchase of the New Jersey Property.

24. The Trustee and his professionals have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the New Jersey Property or the Public Sale that might be pertinent to the purchase of the New Jersey Property, including, without limitation: (a) the current or future estate tax liability, assessment or valuation of the New Jersey Property; (b) the potential qualification of the New Jersey Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (c) the compliance or non-compliance of the New Jersey Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the New Jersey Property; (d) the availability of any financing for the purchase, alteration, rehabilitation or operation of the New Jersey Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (e) the current or future use of the New Jersey Property; (f) the current or future rents, other operating incomes or expenses; (g) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; and/or (h) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the New Jersey Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the New Jersey Property. Each Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. The Trustee and his professionals shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the New Jersey Property, made or furnished by the Trustee or his Professionals. The New Jersey Property shall be delivered vacant of tenancies at Closing.

25. The New Jersey Property is being sold **“AS IS,” “WHERE IS,” “WITH ALL FAULTS,”** without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed as of October 21, 2016, and sale of the New Jersey Property is subject to, among other things: (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of

record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, the New Jersey Property shall be delivered free and clear of any and all monetary liens. By delivering their respective Qualifying Deposits, all Bidders acknowledge that they have had the opportunity to review and inspect the New Jersey Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the New Jersey Property in making their bids. Neither the Trustee nor any of his professionals make any representations or warranties with respect to the permissible uses of the New Jersey Property including, but not limited to, the zoning of the New Jersey Property. All Bidders acknowledge that they have conducted their own due diligence in connection with the New Jersey Property and are not relying on any information provided by the Trustee or his professionals. The New Jersey Property will be sold subject to any and all violations requiring corrective action.

26. The Trustee shall convey the New Jersey Property by delivery of a Trustee's Deed. The quality of title shall be that which any reputable title insurance company authorized to do business in the State of New Jersey is willing to approve and insure. If the Successful Purchaser, or the New Successful Purchaser as the case may be, is unable to obtain title insurance, subject to the permissible exceptions contained herein, the Trustee may, at his option, arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Purchaser, or the New Successful Purchaser as the case may be.

27. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the Bankruptcy Code or otherwise interfere with the jurisdiction of the Bankruptcy Court.

28. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Trustee or by the Court. The Trustee reserves the right to modify these Terms and Conditions of Sale at any time before or after the Public Sale.

29. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference, at the Public Sale of the New Jersey Property. By making a bid for the New Jersey Property, all Purchasers will be deemed to have acknowledged having read and understood these Terms and Conditions of Sale and have agreed to be bound by them.

30. If the Trustee is unable to deliver the New Jersey Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, the Trustee's and the estate's only obligation will be to refund the Deposit and Buyer's Premium, without interest, to the Successful Purchaser, or the New Successful Purchaser as the case may be, and upon such refund, the Successful Purchaser, or the New Successful Purchaser as the case may be, will have no claim or recourse against the Trustee, his professionals or the estate and shall have no further rights under these Terms and Conditions of Sale or Memorandum of Sale.

31. The Public Sale of the New Jersey Property is subject to confirmation by the Trustee and pursuant to a further order of the Bankruptcy Court confirming the Public Sale.

32. The Bankruptcy Court shall determine any disputes concerning the Public Sale of the New Jersey Property. By participating in the Public Sale, all Purchasers consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor's pending case.

33. The Successful Bidder shall provide any and all information requested by the condominium board of managers for the New Jersey Property and execute any and all documents reasonably requested by the condominium board.

I have read these Terms and Conditions of Sale and agree to be bound by them.

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

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



**MEMORANDUM OF SALE – SUCCESSFUL PURCHASER**

High Bid Realized at Public Sale: \_\_\_\_\_

5% Buyer’s Premium: \_\_\_\_\_

**Purchase Price:** \_\_\_\_\_

The undersigned has this \_\_\_ day of \_\_\_\_\_ 2017 agreed to purchase the property located at 22 Meridian Road, Unit 11, Edison, New Jersey 08820 (the “New Jersey Property”) of debtor Sirgold, Inc. (the “Debtor”) and sold by Salvatore LaMonica, the Chapter 11 Trustee of the Debtor, for the sum of \$\_\_\_\_\_ DOLLARS and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of the New Jersey Property and this Memorandum of Sale.

\_\_\_\_\_  
SUCCESSFUL PURCHASER (Signature)

\_\_\_\_\_  
SUCCESSFUL PURCHASER (Signature)

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
EMAIL ADDRESS

Received from \_\_\_\_\_ the sum of \$25,000.00 DOLLARS, as a non-refundable deposit for the purchase of the New Jersey Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price in the above sale was for the sum of \$\_\_\_\_\_.

\_\_\_\_\_  
MALTZ AUCTIONS, INC., d/b/a MALTZ AUCTIONS

**SUCCESSFUL PURCHASER ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

**MEMORANDUM OF SALE – SECOND HIGHEST BIDDER**

Bid Realized at Public Sale: \_\_\_\_\_

5% Buyer’s Premium: \_\_\_\_\_

**Purchase Price:** \_\_\_\_\_

The undersigned has this \_\_\_ day of \_\_\_\_ 2017 agreed to purchase the property located at 22 Meridian Road, Unit 11, Edison, New Jersey 08820 (the “New Jersey Property”) of debtor Sirgold, Inc. (the “Debtor”) and sold by Salvatore LaMonica, the Chapter 11 Trustee of the Debtor, for the sum of \$\_\_\_\_\_ DOLLARS. In the event of the Successful Bidder’s Default and if deemed by Trustee, in his sole and absolute discretion, to hold all benefits and obligations of a Successful Purchaser under the Terms and Conditions of Sale and this Memorandum of Sale and hereby promises and agrees to comply with the annexed Terms and Conditions of Sale of said New Jersey Property and this Memorandum of Sale.

\_\_\_\_\_  
SECOND HIGHEST BIDDER (Signature)

\_\_\_\_\_  
SECOND HIGHEST BIDDER (Signature)

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
ADDRESS (City, State, Zip)

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
EMAIL ADDRESS

Received from \_\_\_\_\_ the sum of \$25,000.00 DOLLARS, as a non-refundable deposit for the purchase of the New Jersey Property pursuant to the Terms and Conditions of Sale.

This is to verify that the final Purchase Price for the 2<sup>nd</sup> Highest Bid was in the above sale was for the sum of \$\_\_\_\_\_.

\_\_\_\_\_  
MALTZ AUCTIONS, INC., d/b/a MALTZ AUCTIONS

**SECOND HIGHEST BIDDER ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_