

DESCRIPTION OF THE TRANSACTION

Gilmore Broadcasting Corporation (“GBC”) is the licensee of station WEHT(TV), Evansville, Indiana. The common stock of GBC previously was voted by James S. Gilmore, Jr., the former Chairman of the Board and Chief Executive Officer of GBC. After Mr. Gilmore’s death in December 2000, National City Bank of the Midwest (formerly National City Bank of Michigan/Illinois) (“NCB”) assumed the authority to vote the GBC shares in its capacity as the Trustee of The James S. Gilmore, Jr. Revocable Trust (“JSG Trust”).¹ In addition to serving as the Trustee of the JSG Trust, NCB also is the Personal Representative of the James S. Gilmore, Jr. Estate (“Gilmore Estate”).

The JSG Trust specifies that two Investment Directors, Mariette Lemieux and George Lennon, by written order could direct the JSG Trustee to issue proxies to them to vote all of the GBC shares.² Ms. Lemieux and Mr. Lennon exercised their proxy rights in early 2001 and have voted all of the shares of GBC since that time. Ms. Lemieux also is the Chief Executive Officer and Treasurer of GBC, while Mr. Lennon serves as the Secretary of GBC and sits on the company’s Board of Directors.

In May 2005, Ms. Lemieux and Mr. Lennon, along with the beneficiaries of the JSG Trust, filed a petition on behalf of NCB with the Kalamazoo County, Michigan

¹ See BTCCT-20020910ABG. At the time of Mr. Gilmore’s death, the shares of GBC were held by Gilmore Enterprises Corporation (“GEC”), of which Mr. Gilmore was the Chairman and CEO. The JSG Trust, in turn, was the sole shareholder of GEC. After Mr. Gilmore’s death, that corporation was dissolved and the GBC shares passed to the JSG Trust.

² The JSG Trust further provides that, in the event that either of the Investment Directors is unable or unwilling to act, a third person, Case Hoogendoorn, may become an additional Investment Director, unless he also is unable or unwilling to act.

Probate Court seeking authority to transfer 100% of the GBC stock from NCB in its capacity as Trustee of the JSG Trust to NCB in its capacity as the Personal Representative of the Gilmore Estate. As explained in the filing, the petition was filed solely for tax purposes.³ On May 31, 2005, the probate court granted the petition and further ordered NCB to provide an irrevocable written proxy to Ms. Lemieux and Mr. Lennon providing them with authority to vote the GBC stock and directing them to continue acting as Investment Directors on the same terms and conditions set forth in the JSG Trust. Pursuant to the court's order, new proxies immediately were issued to Ms. Lemieux and Mr. Lennon. The petition, the court's order, and the proxies are attached hereto.

Accordingly, this application seeks Commission consent *nunc pro tunc* to the *pro forma* transfer of control of GBC from NCB in its legal capacity as the Trustee of the JSG Trust, as directed by Ms. Lemieux and Mr. Lennon, to NCB in its legal capacity as the Personal Representative of the Gilmore Estate, as directed by Ms. Lemieux and Mr. Lennon. As demonstrated herein, Ms. Lemieux and Mr. Lennon have maintained sole voting control over GBC continuously since the death of James S. Gilmore, Jr., and the operations of GBC and WEHT have remained wholly unchanged as a result of the transfer of stock from the Trust to the Estate.

³ As explained in the petition, an estate is permitted under the federal tax code to make certain income tax deductions for amounts set aside for charity that generally are not available to trusts. This tax benefit to estates is relevant to the JSG Trust and the Gilmore Estate because one of the beneficiaries is the Jim Gilmore, Jr, Foundation, a charitable entity.

GBC inadvertently failed to file an application seeking the FCC's consent to this transfer at the time that it occurred, in May 2005, because the company and its local counsel for trusts and estates matters were not aware that the *pro forma* transfer of the company's stock from NCB as JSG Trustee to NCB as Personal Representative of the Gilmore Estate, without any change in the proxy holders, would be viewed as a transfer of control of GBC's FCC licenses. As explained above, Ms. Lemieux and Mr. Lennon have maintained sole voting control over the company's stock both pre- and post-transaction.

STATE OF MICHIGAN PROBATE COURT COUNTY OF KALAMAZOO	MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR AUTHORITY TO TRANSFER AND TO ACCEPT STOCK	FILE NO.
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Estate of James S. Gilmore, Jr, Revocable Trust, Dated August 18, 1960

TIN 38-6774562

NOW COMES, NATIONAL CITY BANK OF THE MIDWEST, formerly known as NATIONAL CITY BANK OF MICHIGAN/ILLINOIS ("Bank"), AS TRUSTEE OF THE JAMES S. GILMORE, JR. REVOCABLE TRUST DATED AUGUST 18, 1960 ("Trust"); NATIONAL CITY BANK OF THE MIDWEST, formerly known as NATIONAL CITY BANK OF MICHIGAN/ILLINOIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES S. GILMORE, JR., Deceased ("Estate"), by George T. Schumacher, its Vice President (the Trustee and the Personal Representative); George H. Lennon and Mariette Lemieux, as Investment Directors of the James S. Gilmore, Jr. Revocable Living Trust dated August 18, 1960; Bethany Diana Gilmore, daughter of decedent; Sydney Fell Gilmore, daughter of decedent; James S. Gilmore, III, son of the decedent; Elizabeth Boos Gilmore Bystrycki, daughter of decedent; Ruth McNair Gilmore Langs, daughter of decedent; and The Jim Gilmore, Jr. Foundation; (together "Petitioner") and hereby presents to this Honorable Court this Memorandum of in support of its Petition for Authority to Transfer and to Accept Stock filed concurrently herewith.

1. Subchapter S Corporation Stock (supporting Petition, ¶14 and ¶17)

There are limitations on who can own Subchapter S corporation stock. Internal Revenue Code of 1986, as amended ("I.R.C."), §1361(b). Only certain types of trusts qualify as Subchapter S shareholders. I.R.C. §1361(c)(2). A revocable, grantor trust qualifies during the grantor's life, but can only qualify for up to two years from the date of the decedent's death. I.R.C. §1361(c)(2)(A)(i), (iii). During that two year period, the estate is the deemed owner of the stock even though it is held by the trust. §1361(c)(2)(B)(ii).

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A trust making an I.R.C. §645 election can actually extend this two year period somewhat. Under a §645 election, the trust may elect to be treated as part of the estate for federal income tax purposes. I.R.C. §645. This election also applies for purposes of the Subchapter S shareholder rules, so that a trust electing under §645 is treated as an estate for those purposes too. Treas. Reg. §1.645-1(e)(2)(i). An estate is a qualified Subchapter S shareholder for the entire period of estate administration, so long as the administration is not unduly delayed. I.R.C. §1361(b)(1)(B); Treas. Reg. §1.641(b)-3(a). Therefore, as long as the §645 election remains in effect, the trust can continue to own Subchapter S stock because it is treated for federal income tax purposes as part of the estate. However, the §645 election only may be kept in effect for the longer of (i) two years after the date of the decedent's death or (ii) if an estate tax return is filed, six months after the date of final determination of estate tax liability (which generally is deemed to be six months after the issuance of an estate tax closing letter, making a combined total time period of one year). Treas. Reg. §1.645-1(f)(2)(ii). Under the foregoing rules, a revocable trust effectively could continue to hold Subchapter S stock for a period of up one year (i.e., the two six month periods mentioned above combined together) after the issuance of an estate tax closing letter.

To have a trust hold Subchapter S stock for longer than such one year period after the issuance of a closing letter, it would be necessary to have the stock (i) transferred to an estate; (ii) held by a trust which elects to be taxed as an electing small business trust for income tax purposes; or (iii) passed to a trust which is a deemed testamentary trust after the termination of the §645 election.

An estate can continue to hold Subchapter S stock for the entire period of administration, so long as the administration is not unduly delayed. I.R.C. §1361(b)(1)(B); Treas. Reg. §1.641(b)-3(a). The administration of an estate is not unduly delayed where the purpose of retaining the stock in an estate is to facilitate payment of estate taxes pursuant to an election to defer payments under §6166. Rev. Rul. 76-23, 1976-1 C.B. 264.

An electing small business trust is a qualified Subchapter S shareholder, but this type of trust is seldom used because it

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requires the trust to pay income taxes at the highest marginal income tax rates from the first dollar earned, which is obviously significantly less favorable than normal graduated individual income tax brackets or even the more compressed trust income tax brackets. I.R.C. §1361(c)(2)(A)(v); I.R.C. §641(c)(2).

A trust which is a testamentary trust can continue to hold Subchapter S stock for up to two years from the date the stock is transferred to it. §1361(c)(2)(A)(iii). Upon the termination of a §645 election, the trust which was being taxed as part of an estate is deemed to have transferred the stock to a new trust (even if no actual transfer occurs) and such new trust is deemed to be a testamentary trust which qualifies for a two year deferral from the date of the transfer. Treas. Regs. §1.645-1(h); §1.1361-1(h)(1)(iv)(B); §1.1361-1(h)(3)(i)(D); §1.1361-1(k)(1) (Example 3(ii)). Therefore, under these final regulations recently released in July of 2003, it appears possible to extend the period during which a revocable trust can continue to hold stock after a §645 election terminates for up to an additional two years. I.R.S. Treasury Decision (T.D.) 9078.

In Private Letter Ruling (PLR) 200226031, the IRS has tacitly acknowledged that there is no policy basis for making a distinction between a trust and an estate in terms of which can hold Subchapter S stock for a longer time during a period of administration. In fact, in that case, the IRS ruled that a trust could continue to hold Subchapter S stock for the entire §6166 period. However, the ruling noticeably failed to make any reference to the other time limitations outlined above or provide any explanation as to why they did not apply to what was apparently a typical revocable trust in that instance.

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2. **Charitable Set-Aside** (in support of Petition, ¶14)

I.R.C. §642(c) allows an income tax deduction to an estate for an amount permanently set aside for charity. This deduction is generally not available to a trust (except for certain irrevocable pre-1969 trusts). I.R.C. §642(c)(2). However, during the period that a trust is taxed as part of an estate under a §645 election, the same charitable set aside deduction is made available to the trust because it is taxed as part of an estate. Treas. Reg. §1.645-1(e)(2)(iv). As noted above, the §645 election with respect to a trust only could continue for a period of up to one year after the issuance of an estate tax closing letter. Treas. Reg. §1.645-1(f)(2)(ii). The charitable set aside provision would not be available to a trust after one year from the issuance of the estate tax closing letter, but would continue to be available to an estate during the entire nine year estate tax deferral period.

3. **Estate Tax Liability** (in support of Petition, ¶22)

I.R.C. §2002 imposes responsibility on the executor (i.e., personal representative) or administrator to pay the estate tax.

J. §2002. This responsibility extends to "the entire tax, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor or administrator." Treas. Reg. §20.2002-1. An executor may have personal liability for paying a debt or distributing any property before paying a tax debt due to the United States. *Id.*, citing 31 U.S.C. 192. In addition, any trustee who has or receives property included in the gross estate of a decedent is personally liable for the tax to the extent of the value, at the time of the decedent's death, of such property. *Id.* Therefore, the personal representative has primary responsibility to pay the estate tax, and both the personal representative and the trustee have potential personal liability for the payment of a portion of the tax.

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4. Transfers Under Michigan Law (in support of Petition, ¶23)

In most instances involving a decedent's estate and a trust, property is transferred from the estate to the trust pursuant to a "pour over" will. However, there is precedent for "upstream" transfers in which property is transferred from the trust to the estate.

For example, Section 7501 of the Estates and Protected Individuals Code provides that property of a revocable trust is subject to certain expenses, claims and allowances to the extent that they cannot be paid out of the probate estate. M.C.L.A. 700.7501. The statute further goes on to expressly provide a procedure by which the trustee can be directed and required to turn over assets of the trust to the personal representative of the estate. M.C.L.A. 700.7502; M.C.L.A. 700.3805(3). Since the statute expressly allows for transfers from a trust to an estate, even when the trustee might object to the transfer or the transfer arguably might be inconsistent with the settlor's intentions, there is no reason that a trustee should not be permitted to make such an "upstream" transfer when the transfer is voluntary by the trustee, is consented to by all of the interested parties,

(within the scope of the powers granted to the trustee, furthers the settlor/decedent's intentions, and contributes to the personal representatives's and trustee's ability to meet their respective responsibilities by retaining the assets to enable them to pay the federal estate tax obligations.

Absent such an "upstream" conveyance to the Estate, the Trustee would be forced give up the income tax advantages of the charitable set aside, and, within two years thereafter (presuming that the trust could be treated as a deemed testamentary trust during that time), the Trustee would be forced to elect between (i) distributing the GBC stock to the beneficiaries, which would take the asset needed to generate the income to pay the estate taxes outside the Trust's domain, would trigger a drain on cash flow to fund charitable distributions, and could force a sale of the company at an inopportune time and (ii) choosing to be taxed as a electing small business trust, which results in substantially higher income taxes.

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5. Table of Authorities

a. Cited in this Memorandum of Law (a copy of each is attached)

- (i) I.R.C. §1361(b); §1361(b)(1)(B); §1361(c)(2); §1361(c)(2)(A)(i). §1361(c)(2)(A)(v); §641(c)(2). (iii); §1361(c)(2)(B)(ii); Treas. Reg. §1.1361-1(h)(1)(iv)(B); §1.1361-1(h)(3)(i)(D); §1.1361-1(k)(1)(Example 3)(ii)
- (ii) I.R.C. §645; Treas. Reg. §1.645-1(e)(2)(i); Treas. Reg. §1.645-1(e)(2)(iv) Treas. Reg. §1.645-1(f)(2)(ii); Treas. Reg. §1.645-1(h)
- (iii) Treasury Decision 9078
- (iv) Treas. Reg. §1.641(b)-3(a)
- (v) I.R.C. §641(c)(2)
- (vi) Revenue Ruling 76-23; 1976-1 C.B. 264
- (vii) P.L.R. 200226031
- (viii) I.R.C. §642(c); §642(c)(2)
- (ix) I.R.C. §2002; Treas. Reg. §20.2002-1
- (x) M.C.L.A. 700.7501; M.C.L.A. 700.7502; M.C.L.A. 700.3805(3)

b. Cited in the Petition (a copy of each is attached)

- (i) I.R.C. §6166
- (ii) I.R.C. §645; Treas. Reg. §1.645-1(h)
- (iii) I.R.C. §642(c)

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- (iv) I.R.C. §641(c)(2)
- (v) I.R.C. §512(e)
- (vi) I.R.C. §4943; §4943(c)(6); Treas. Reg. §53.4943-6(b)(1); 4943(c)(7)
- (vii) M.C.L.A. 700.7408; M.C.L.A. 700.3715; M.C.L.A. 700.1302(a); M.C.L.A. 700.1302(b); M.C.L.A. 700.1302(b)(v), (vi)

May 3, 2005

(Date)

Early, Lennon, Crocker & Bartosiewicz, P.L.C., as Attorneys for:
Personal City Bank of the Midwest, as Personal Representative of the
Estate of James S. Gilmore, Jr., Deceased, and as Trustee of the
James S. Gilmore, Jr. Revocable Trust Dated August 18, 1960

By: _____

George H. Lennon

P16555

Attorney name (type or print)

Bar no.

900 Comerica Bldg.- 151 S. Rose Street

Address

Kalamazoo, MI 49007

(269) 381-8844

City, state, zip

Telephone no.

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STATE OF MICHIGAN PROBATE COURT Kalamazoo COUNTY	FINDINGS AND ORDER PETITION FOR AUTHORITY TO TRANSFER AND TO ACCEPT STOCK	FILE NO. 20050508 TV
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In the Matter of the Estate of James S. Gilmore, Jr., deceased, File: 20010095-DE
In the matter of the James S. Gilmore, Jr. Trust dated August 18, 1960

THE COURT FINDS:

1. That this Court has jurisdiction over these proceedings relating to the Petition for Authority to Transfer and to Accept Stock (hereafter referred to as "Petition"), under MCL 700.7201 (1) and MCL 700.1302(b).
2. That the James S. Gilmore, Jr. Revocable Trust Dated August 18, 1960, hereinafter referred to as "Trust", has been duly registered with this court for purposes of this proceeding. The Trustee, National City Bank of the Midwest submits to the personal jurisdiction of this court in this proceeding, and for so long as the Trust remains registered.
3. Venue is proper in Kalamazoo County where the decedent's estate is being probated (Kalamazoo County Probate Court file 20010095DE), and where the Trust is registered under MCL 700.7202.
4. All of the persons interested in this proceeding are also Petitioners, having joined with the Trustee in bringing the aforesaid Petition before the Court.
5. As the Petitioners, all of the interested persons have been fully informed and have received a copy of the Petition, The James S. Gilmore, Jr. Trust and all exhibits and memorandum of law attached to the Petition and the Notice of Hearing on the Petition.
6. Under the terms of the Petition, all of the Petitioners have consented and agreed to the transfer of stock as described therein.
7. The request of the Petitioners to transfer stock as set forth in the Petition is just and reasonable under the relevant facts and circumstances.
8. The Petition of the Interested Parties does not make any substantive changes to the dispositive provisions of the Trust.
9. That under all facts and circumstances, a Guardian-Ad-Litem is *not* required to represent the interests of any minor descendants, unborn, unknown and unascertainable descendants who are and may be remote contingent beneficiaries.

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KALAMAZOO COUNTY
PROBATE COURT
FILED
MAY 31 2005

FINDINGS & ORDER on PETITION FOR AUTHORITY TO TRANSFER AND TO ACCEPT STOCK

10. Under the facts and circumstances present, the transfer of stock as described in the Petition is in the best interests of the Estate of James S. Gilmore, Jr. (hereinafter referred to as "Estate"), Trust, and all of the Interested Persons by creating an arrangement which will facilitate the performance by the Personal Representative of its primary obligation to pay estate tax payments in full while minimizing the federal income tax burden on the Trust and the Estate.

11. That pursuant to the terms of the Trust, as described in the Petition, and the laws of the State of Michigan, the Trustee has the authority to transfer stock from the Trust to the Personal Representative of the Estate under the facts and circumstances present and for the purposes described in the Petition.

12. Under the facts and circumstances present, and the laws of the State of Michigan, the Personal Representative has authority to accept the stock transfer from the James S. Gilmore Jr. Trust as described in the Petition.

ORDER

This matter having been duly noticed and brought on for hearing before the Kalamazoo County Probate Court, 150 E. Crosstown Parkway, Kalamazoo, Michigan on this 25th day of May, 2005.

IT IS ORDERED that the relief requested in Petition for Authority to Transfer and To Accept Stock is granted and that:

a) National City Bank of the Midwest, Trustee of the James S. Gilmore Jr. Trust is hereby duly authorized by this Court to transfer Eleven Thousand-Four Hundred Four (11,404), shares of stock in Gilmore Broadcasting Company, a Delaware Corporation, (being all of the such stock held by the Trust), to National City Bank of the Midwest, as the Personal Representative of the Estate of James S. Gilmore, Jr.; and,

b) National City Bank of the Midwest, as the Personal Representative of the James S. Gilmore, Jr. Estate is hereby duly authorized by this Court to accept the transfer of stock described above from the Trust and to hold said stock in the Estate of James S. Gilmore, Jr. until the state and federal estate tax has been paid in full, or the stock is sold, or all the assets of Gilmore Broadcasting Company are sold and the sale proceeds are distributed, or until the administration of the Estate has been completed, at which time the Personal Representative will make the final distribution to the Trustee, who will proceed with the final distribution of the Trust assets.

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IT IS FURTHER ORDERED AND DIRECTED :

That the Personal Representative, National City Bank of the Midwest shall provide an irrevocable written proxy and letter of direction to the Investment Directors named in the Trust who have responsibility for overseeing the operation of Gilmore Broadcasting Company, providing them with authority to vote the stock, and directing them to continue acting as Investment directors on the same terms and conditions set forth in the Trust and In Article Three (a) of the Decedent's Last Will;

IT IS FURTHER ORDERED AND DIRECTED:


Upon completion of the above ordered transfer, the Trust registration and the Court's jurisdiction over the Trust and the Trustee shall be terminated.

MAY 31 2005


HONORABLE DONALD R. HALSTEAD P14564
PROBATE COURT JUDGE

I certify that I have compared this copy with the original on file in this court and that it is a correct copy of the whole of such original.

MAY 31 2005

DONALD R. HALSTEAD Judge of Probate
Kalamazoo County Kalamazoo Michigan
By 
Assistant Register of Probate

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FINDINGS & ORDER on PETITION FOR AUTHORITY TO TRANSFER AND TO ACCEPT STOCK

Gilmore Broadcasting Corporation**Proxy**

The undersigned, owner of record of **11,404** shares of Common Class A Voting Stock of **Gilmore Broadcasting Corporation**, a Delaware corporation, as Trustee of the James S. Gilmore, Jr. Revocable Trust, does hereby appoint **Mariette A. Lemieux** and **George H. Lennon**, or the survivor of them, as Proxy to vote all such shares that may be entitled to be voted in all matters, from and after January 1, 2002, unless and until this Proxy shall be revoked in writing delivered to each of them, or to the survivor of them.

**National City Bank of Michigan/Illinois,
as Trustee of the James S. Gilmore, Jr.
Revocable Trust**

By: Carroll K. Kuehl

Its: Vice President

Gilmore Broadcasting Corporation

Revocation of Proxy

The undersigned, owner of record of 11,404 shares of Common Class A Voting Stock of **Gilmore Broadcasting Corporation**, a Delaware corporation, as Personal Representative of the Estate of James S. Gilmore Jr., Deceased and as Trustee of the James S. Gilmore, Jr. Revocable Trust, does hereby revoke, the Proxy previously given to **George H. Lennon** and **Mariette A. Lemieux** which Proxy was effective January 1, 2002, to vote the 11,404 shares of Gilmore Broadcasting Corporation Common Class A Voting Stock then owned by the undersigned as Trustee.

Dated at Kalamazoo, Michigan
the 31st day of May, 2005

**National City Bank of the Midwest,
as Personal Representative of the Estate of James
S Gilmore, Jr. Deceased and Trustee of the James
S. Gilmore, Jr. Revocable Trust**

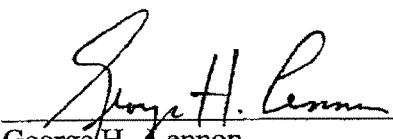
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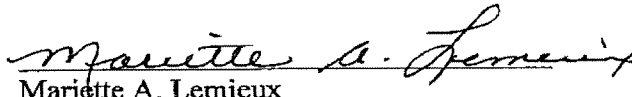
George Schumacher

Its: Vice President

Acknowledgment of Receipt of Proxy Revocation

The undersigned hereby acknowledges receipt of the above Revocation of Proxy, effective May 31, 2005


George H. Lennon


Mariette A. Lemieux

Gilmore Broadcasting Corporation

Proxy

The undersigned, owner of record of **11,404** shares of Common Class A Voting Stock of **Gilmore Broadcasting Corporation**, a Delaware corporation, as Personal Representative of the Estate of James S. Gilmore, Jr., Deceased and Trustee of the James S. Gilmore, Jr. Revocable Trust, does hereby appoint **Mariette A. Lemieux** and **George H. Lennon**, or the survivor of them, as Proxy to vote all such shares that may be entitled to be voted in all matters, unless and until this Proxy shall be revoked in writing delivered to each of them, or to the survivor of them.

Dated at Kalamazoo, Michigan
the 1st Day of June, 2005

**National City Bank of the Midwest,
as Personal Representative of the Estate of James
S. Gilmore, Jr., Deceased and Trustee of the
James S. Gilmore, Jr.
Revocable Trust**

By: 

George Schumacher

Its: Vice President