



for the relief sought herein is §§ 105 and 363 of the Bankruptcy Code, as complimented by Rules 2002, 6004 and 9019 of the Federal Rules of Bankruptcy Procedure.

### **Background**

2.

This case was commenced on August 1, 2018 by the filing of a voluntary petition. The Trustee was appointed chapter 11 trustee on October 4, 2018 and remains the duly appointed trustee in this case.

3.

The Debtor owns that certain real property and improvements located at 18 Audubon Place, New Orleans, LA (the “**Property**”). The Property is subject to numerous encumbrances: (i) a multiple indebtedness mortgage in the face amount of \$3,200,000 in favor of SBN V FNBC, LLC, successor in interest to First NBC Bank (“**SBN**”), dated May 31, 2012; (ii) a mortgage in the face amount of \$139,573.80 in favor of Trinity Episcopal School (“**Trinity**”) dated October 31, 2016; (iii) a claim of privilege by Audubon Place Commission in the face value of \$11,100.00, dated July 3, 2017, and (iv) the July 23, 2018 attempted lease of the Property to Richard Goldenberg, Debtor’s principal, for \$25,000.00 per month, recorded as instrument no. 2018-29548, conveyance instrument no. 642617. The Property has also been sold at tax sale to Forstall Follies LLC (“**FLLC**”).

### **The Trustee’s Compromise with Gilmore, SBN and Trinity**

4.

The Trustee has reached an agreement with SBN, Trinity and Gilmore, whereby:

(a) The SBN claim is allowed under § 506 and its related mortgage is recognized as first and prior against the Property (the “**SBN Mortgage**”);

(b) The Trinity claim is allowed under § 506 and its related mortgage is recognized against the Property (the “*Trinity Mortgage*”);

(c) The Estate will employ Gilmore to auction the Property (addressed in detail below);

(d) SBN agrees to grant the Estate a carve-out (the “*SBN Carveout*”) for (i) all present and past outstanding property taxes, (ii) all other reasonable seller’s costs of closing, (iii) all actual and necessary costs required to preserve the Property through a sale closing, including without limitation utility service and insurance coverage, and (iv) the greater of (y) three (3) percent or (z) \$150,000, of the gross sale price, and to pay the SBN Carveout in cash should it choose to credit bid the SBN Mortgage.

(e) Trinity agrees to grant the Estate a carve-out (the “*Trinity Carveout*”) for three (3) percent of the Trinity Mortgage from all proceeds from the sale over and above the SBN Mortgage attributable to the Trinity Mortgage, and to pay the Trinity Carveout in cash should it choose to credit bid the Trinity Mortgage.<sup>1</sup>

(f) The SBN and Trinity Carveouts are only payable in connection with a sale pursuant to this motion and is in lieu of any and all estate claims of any kind against SBN and Trinity, including without limitation claims to surcharge SBN or Trinity or their collateral under § 506(c) or otherwise, which claims are released and discharged upon payment of the SBN and Trinity Carveout.

(g) The Estate and Gilmore agree to evenly split the three (3) percent carved-out of the SBN and Trinity Mortgages in ¶¶ (c) and (d), above. If the sale price of the Property fully satisfies all allowed secured claims against the Property, Gilmore shall be entitled to an additional ten (10) percentage points of commission per each unencumbered dollar collected. To illustrate, if the Property were to sell for the sum of \$6 million, and the total allowed secured

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<sup>1</sup> The Trustee and Trinity are presently negotiating this provision.

claims were \$5.5 million, Gilmore would receive 1.5% of the \$5.5 million and 10% of the unencumbered \$500 thousand. The foregoing shall comprise Gilmore's sole compensation and any buyer's premium will be treated as part of the sales price.

5.

The Trustee submits that the compromise proposed herein is in the best interest of the Estate. This Proposed Agreements will allow the Estate to safely market and sell property that appears to be encumbered beyond value and return a benefit to the estate's unsecured creditors with essentially no risk to the Estate.

6.

While the degree of such benefit will, of course, depend on the final auction price, we know that the Proposed Agreement allows for the Estate to recover no less than 1.5% of any bid price received. The Trustee believes that the resolution proposed herein will strengthen the Estate's ability to maximize recovery to the Estate's creditors by providing, in the most cost-efficient manner, a return and certainty and finality regarding any sale and issues related to the Property.

7.

The Trustee asserts that the compromise is the result of arms-length negotiations between the Trustee, SBN, Trinity and Gilmore, and does not represent any fraud or collusion between the parties.

8.

In accordance with applicable law, this matter will be noticed for hearing, allowing the Estate's creditors the opportunity to oppose the Proposed Agreements should any choose to do so.

9.

Considering the Proposed Agreements terms and the costs associated with moving forward without such agreement in place, the Trustee suggests that the Proposed Agreement is fair and equitable and in the best interest of the Estate and Debtor' creditors and should thus be granted.

#### **Employment of Auctioneer**

10.

The Trustee wishes for Gilmore to serve as auctioneer for the Estate. From his past experience in acting as a trustee in bankruptcy cases, the Trustee is satisfied that he can achieve the best and highest net recovery to the Estate by employing a qualified auctioneer to conduct a public auction of the Property. The need to retain Gilmore for the Trustee is of paramount importance, as the marketing and sale of the Property will maximize benefits to the Estate. As such, Gilmore's services are appropriate and necessary to assist the Trustee.

11.

The Trustee proposes that Gilmore, a licensed and bonded auctioneer with extensive experience and success with auctioning property in bankruptcy matters, liquidate the Property at an absolute auction sale as per the terms of the Exclusive Rights of Sale Auction Listing Agreement attached hereto as **Exhibit "A"** (the "***Auction Listing Agreement***"), which includes, among other things, the imposition of the ten (10) percent modified buyer's premium, as described above in Paragraph 4(g), on the eventual buyer and that the Property will be sold "as is, where is" utilizing the Trustee's form of purchase agreement. Gilmore's duties will include, without limitation: handling all potential bidder information requests, internet marketing, web sites, print advertising placement, media requests, purchase agreements, receiving bids, holding

deposits, and assisting / conducting the Property's auction. The auction will occur before December 21, 2018, absent the agreement of the Trustee, SBN and Trinity.

12.

Attached hereto as **Exhibit "B"** is the declaration of David Gilmore, pursuant to Bankruptcy Code §327(a), Bankruptcy Rule 2014, and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the Eastern District of Louisiana, stating that (i) Gilmore is a disinterested person, as such term is defined in section 101(14) of the Bankruptcy Code and as required under section 327(a) of the Bankruptcy Code, and neither holds nor represents an interest adverse to the Trustee or the Estate, and (ii) Gilmore has no connection to the Trustee, the Estate, or its significant creditors. Additionally, Gilmore does not represent or hold any interest materially adverse to the Trustee or to the Estate with respect to the matters for which Gilmore would be retained.

13.

Gilmore will schedule and advertise the proposed auction pending this Court's approval of this Motion. Gilmore will utilize his typical bid and auction procedures in order to maximize the recovery of the estate. Gilmore is aware of the provisions of 11 U.S.C. §328 and has agreed, notwithstanding the terms and conditions of employment set forth herein, that the Court may allow compensation different from the compensation provided herein if such terms and conditions prove to have been improvident in light of developments not anticipated at the time of the fixing of such terms and conditions; however, the Trustee seeks authority herein for Gilmore to retain the fees and expenses to which it is entitled as set forth above immediately after the auction has been completed, without further Order of this Court.

**Auction of Property Free and Clear of All Liens and Encumbrances**

**(a) The Proposed Sale Satisfies the Requirements of Section 363(f) for a Sale Free and Clear**

14.

Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, 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.

15.

Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Trustee's sale of the Property free and clear of all liens, claims, encumbrances, and any and all interests of any kind (collectively "*Interests*"), including without limitation those listed in ¶ 3 (i) – (iv), above. The Trustee submits that the sale of the Property proposed in this Motion free and clear of all Interests satisfies the requirements of 11 U.S.C. § 363(f).

16.

In this case, sale under Section 363(f) "free and clear" of the above interests is appropriate because:

- 1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest,
- 2) the interest is in bona fide dispute; and/or

3) the lienholder or claimholder will consent;

17.

In this same vein, the Trustee requests that any order entered by this Court authorizing the Property's auction specify that such order is binding upon and governs the acts of all entities including without limitation, all filing agents, filing officers, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of her office, or contract, to accept, file, register or otherwise record or release any documents or instruments, and direct that all such persons cancel all such interests from her records as to all of the Property sold at the auction.

18.

The Trustee does not seek to deviate from standard protocol, in that all liens against the Property will attach to any proceeds from the sale (the "*Sale Proceeds*") and the Sale Proceeds will be distributed in accordance with the provisions set forth in 11 U.S.C. § 724(b). Additionally, all creditors with secured claims allowed under § 506 shall have credit bid rights. For the avoidance of any doubt, both SBN and Trinity Mortgages constitute allowed claims under § 506 and both creditors shall have credit bid rights.

19.

The Trustee requests authority to make the following distributions from the Sale Proceeds at the closing of such sale:

- a. the Carveout and
- b. satisfaction (in order) of the (i) SBN and (ii) Trinity Mortgages and (iii) the Audubon Place Commission encumbrance, each to the extent possible.



20.

Section 363(m) of the Bankruptcy Code provides that the reversal or modification on appeal of a transaction authorized under §363(b) of the Bankruptcy Code does not affect the validity of the sale to an entity that acquired the property in good faith. Because Gilmore will have advertised the Property for sale through an intensive advertising and marketing program and the auction is open to the public, it is beyond question that (i) the successful bidders shall be good faith purchasers, (ii) the sale of the Property at the auction shall be at arm's length, and (iii) the successful bidders are entitled to the protections under §363(m) of the Bankruptcy Code. SBN and Trinity are deemed to be good faith purchasers should they purchase the property at the auction

21.

The Trustee asks for the authority to execute any and all documents necessary to effectuate the sale, including without limitation the act of sale.

#### **Rejection of Possible Executory Contract**

22.

On July 23, 2018, the Debtor attempted to lease the Property to Richard Goldenberg, Debtor's principal, for \$25,000.00 per month. This attempt at a lease was recorded into the public records on July 31, 2018 (the "Lease") as instrument no. 2018-29548, conveyance instrument no. 642617. On October 16, 2018, this court ruled that the Lease was "invalid, null, void, and ordered cancelled from the records."

23.

Richard Goldenberg and Karen B. Goldenberg, the alleged tenants under the Lease, have appealed the October 16, 2018 ruling. Accordingly, in an abundance of caution, the Trustee

moves to reject the Lease under § 365 should it be later determined that the lease is effective and executory.

24.

A decision to assume or reject agreements under 11 U.S.C. § 365 is governed by the business judgment test. *Richmond Leasing Company v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985). The business judgment standard mandates that a court approve a trustee's business decision unless the decision is the product of bad faith, whim or caprice with approval withheld if the "judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *See Lubrizol Enters. v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *Allied Technology, Inc. v. R.B. Brueman & Sons*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982).

25.

Within the context of the instant Lease, the Trustee does not believe the possibility of rentals – particularly rentals that appear to be cash collateral of SBN – from tenants that have little history of actually paying rent, outweighs the detriment to the estate of the tenants' continued occupancy of the property. The Debtor suggests it has an appropriate business justification and thus, this Court should authorize the rejection of the Lease.<sup>2</sup>

**WHEREFORE**, the Trustee prays as follows:

a. That the Court authorize the auction of the Property on the terms and conditions set forth herein, free and clear of all liens and interests;

b. That the Court approve and authorize the compromise between the parties as set forth herein;

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<sup>2</sup> The Trustee reserves all rights regarding the effect of rejection. Moreover, nothing herein should be construed as a waiver of any right under 11 U.S.C. § 548 or other applicable section to avoid the obligations imposed under the Lease or to recover damages from the tenants.

c. That the Court approve the Gilmore Auction Listing Agreement authorizing the Trustee to employ Gilmore as auctioneer to conduct a public auction of the Property with compensation and reimbursement of expenses to be allowed and paid out of the gross proceeds of the sale as set forth herein;

d. That the Order authorizing the auction (i) provide that the purchaser(s) of the Property at the auction are purchasers in good faith and entitled to all of the protections afforded by 11 U.S.C. §363(m) of the Bankruptcy Code, (ii) be effective as a determination that all interests (if any), existing as to the Property prior to the auction will be unconditionally released, discharged and terminated as to the Property, (iii) be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of her office, or contract, to accept, file, register or otherwise record or release any documents or instruments (collectively "*the Filing Officers*"), and (iv) direct that all such Filing Officers cancel all such interests from her records as to all of the Property sold at the auction;

e. That the Court approve and authorize the rejection of the Goldenbergs' July 31, 2018 lease; and

f. For such other and further relief as is just.

Signature Page to Follow:

Respectfully Submitted,

**STEWART ROBBINS & BROWN LLC**

620 Florida Street, Suite 100

P. O. Box 2348

Baton Rouge, LA 70821-2348

(225) 231-9998 Telephone

(225) 709-9467 Fax

By: /s/ Paul Douglas Stewart, Jr.  
Paul Douglas Stewart, Jr. (La. #24661)  
[dstewart@stewartrobbins.com](mailto:dstewart@stewartrobbins.com)

*Counsel for David V. Adler, Chapter 11 Trustee*

# **EXHIBIT A**

## **AUCTION AGREEMENT**

SVN | GARC  
 3316 FLORIDA AVENUE  
 KENNER, LOUISIANA 70065-3645

EXCLUSIVE RIGHTS OF SALE ACCELERATED MARKETING LISTING AGREEMENT

- This Exclusive Right of Sale Agreement (“Agreement”) of the property below for the listing and sale of real estate made this 2 November, 2018 by and between the following Parties:

SELLER (S): David Gilmore, Chapter 11 Trustee of 18 Audubon Place, LLC, c/o Paul D. Stewart, Jr.

NAME: 301 Main Street, Suite 1640	ATTN: dstewart@stewartrobb ins.com	
ADDRESS BR	E-MAIL LA	
	70801	
CITY 225-231-9998	STATE	ZIP 225-937-4526
PHONE	FAX	CELL

Hereinafter referred to

as “Seller.”

SELLER’S

DESIGNATED

AGENT(s)

SVN|GARC  
 3316 FLORIDA AVE.  
 KENNER, LA 70065-3645  
 PHONE: (504) 468-6800 FAX: (504) 468-6811

Hereinafter referred to as “Agent.” Seller and Agent hereby agree that the Seller shall sell the below described property upon the terms and conditions as set forth in this Agreement.

- This Agreement shall consist of 3 pages plus exhibits and attachments, if any.
- Seller gives agent the sole and exclusive right to sell the following described property:

18 Audubon Place	NOLA	LA
Subdivision:	City:	Parish/County: State:
Including:		
Excluding:		

- FINAL DATE OF EVENT: Agent shall conduct an Auction commencing on or about the

following date and shall use its best efforts to secure a purchaser for the above described property at the terms named within this Agreement or upon any other price and terms acceptable to the Seller. Prior to December 21, 2018, absent the approval of more time by the Trustee, SBN and Trinity.

- 4a. SERVICES PROVIDED BY AGENT: marketing services- budget planning, signage, ad copy, ad layout, brochure design, printing, ad placement, mailing lists, telemarketing, property preview coordination. Accelerated services- online bidding, bid assistants, clerking, contract preparation, Event facilities, audiovisual. Post Event services – Supervise closing agent, purchaser/seller follow-up and monitor act of sale.
5. TIME PERIOD OF LISTING AGREEMENT: This Exclusive Right of Sale Listing Agreement shall begin when Agent and Seller have signed this Agreement. It shall continue through and include any agreed-upon sale date. Should an Agreement to Purchase and Sell (“APS”) be executed and the sale not occur within 60 days of its execution, this Listing Agreement shall have an automatic one-time extension of 90 days under the same terms and conditions.

The post Event listing shall include signage, telemarketing, World Wide Web Advertising and the Multiple Listing Service/LACDB. The benefits and obligations of this contract herein shall inure to and bind the respective, heirs, executors, administrators, successors, and assigns of the parties hereto.

Seller further agrees to pay Agent the Commission stated below on any sale of said property negotiated by Seller within 90 days after the expiration, extension, or termination of this contract with any party (or the nominee, representative or affiliate of such party) to whom said property was submitted during the term of this contract, including but not limited to: registered bidders, open house attendees, and prospects that have contacted Agent for information. Agent shall provide to seller a list of all prospects within 30 days of the Event.

6. COMMISSION: Agent will be entitled to a commission on the gross amount received from the sale of the property from all sources at closing (the “Commission”). The Commission will be calculated as follows: (i) for a gross amount up to an amount necessary to satisfy all encumbrances against the property, the Agent will receive 1.5 percent, from all amounts received over and above the encumbrances against the property the agent will receive 10 percent. Seller shall pay the Agent the above-mentioned Commission from the total contract price whether the Purchaser is secured by the Agent, by the Seller, by the Event, or by any other person or means. If the property is sold through negotiation prior to or after the Event, the Commission shall be deducted from the purchase price. The Commission is due and payable upon Act of Sale or in the case of Default as listed in Paragraph #11. Only the parties to the Agreement have negotiated the commissions reflected in this Agreement. In addition to the Commission, Gilmore will be provided a \$5,000.00 marketing budget by the estate.
7. INQUIRIES: Seller agrees to promptly disclose and refer to the Agent all written or oral inquiries from brokers or prospects interested in Seller’s property, to cooperate fully and not to obstruct the sale of the property during the term of this contract.
8. TERMS OF SALE: This Agreement is subject to Bankruptcy Court approval and the event shall be advertised and conducted subject to Bankruptcy Court Order. Agent shall utilize the Trustee’s form of Purchase Agreement, as Ordered by the Court.
9. ADVERTISING AND PROMOTION INVESTMENT: Agent is authorized to place advertising in such media as Auctioneer selects, and provide necessary support, promotional assistance, supplies, and materials to produce an auction of superior quality. Seller hereby authorizes Auctioneer to install auction signs on listed property.

10. \_\_\_\_\_  
Not used.
11. DEFAULT BY PURCHASER: In the event the transfer of title to Seller’s property is not completed because of default by Purchaser, Seller shall pay to Agent one-half of the earnest money forfeited. However, the fee shall not exceed the full amount had the transaction closed.
12. DEPOSIT: Agent or Escrow Agent is authorized to accept, give receipt for, and hold all monies paid or deposited. Deposits will be held in the Escrow Account.

In the event of an escrow deposit dispute and the Agent is in doubt as to the disbursement of escrow funds, he shall have the right to release the money to the United States Bankruptcy Court for the Eastern District of Louisiana, which shall determine the rights of the parties involved in the dispute; but in no case, will this action waive the Seller’s responsibility to the Agent of the Commission.

13. ATTORNEY FEE AND COSTS: In connection with any litigation arising out of this contract, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney’s fees.
14. LIMITATION OF LIABILITY: Agent shall not be responsible for any damages, expenses, or other losses occurring by the high bidder at any Event refusing to submit or sign an Agreement to Purchase and Sell, Seller understands that this Agreement does not guarantee the sale of his property, but it does guarantee that the Agent will make a sincere and honest effort to procure a sale for the Seller’s described property.
15. TITLE FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES: Seller will deliver the property free and clear of all mortgages, liens, judgments and any other encumbrances. Seller agrees to hold the Agent harmless in the event of Seller’s inability to perform. Real Estate taxes are to be prorated to and excluding date of Act of Sale.
16. OTHER AGREEMENTS: No modification or change in this Agreement shall be valid or binding upon the parties involved, unless it is in writing and executed by the parties to be bound thereby.
17. CONDITION OF PREMISES: Property to be sold “as is, where is”, with the Seller and Agent making no guaranties as to the condition of said property. Seller agrees to represent the true state of affairs with respect to the condition of the property and authorizes Agent to disclose this condition to prospective Purchasers.

_____	by: _____	_____
PROJECT MANAGER	SELLER	DATE
_____	by: _____	_____
DATE	SELLER	DATE
	by: _____	_____
	SELLER	DATE
	by: _____	_____
	SELLER	DATE



SVN|GILMORE AUCTION & REALTY  
Co.

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Louisiana Auctioneer License #447  
Louisiana Real Estate Brokers License #42445

DAVID E. GILMORE

#378 Mississippi Auction Firm License #641F Mississippi Real Estate License #B-14307

DATE

Mississippi Auctioneer License

Texas Auctioneer License #00011136

Alabama Auctioneer

License #1832 Arkansas

Auctioneer License #1979

Arkansas Real Estate Brokers License

#PB00066681 Oklahoma Real Estate

Brokers License #149073

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**Necessary File Items**

*The following is a list of necessary file items that will enable SVN/GARC to professionally promote your property. Please try to be accurate and thorough as it may affect the final value of the real estate.*

- |  |   |
|--|---|
| <input type="checkbox"/> Titles/Mortgage Documents     | <input type="checkbox"/> Listing Agents ( <i>if applicable</i> ) (Name, Address, Phone) |
| <input type="checkbox"/> Title Insurance Policy        | <input type="checkbox"/> Seller's List of Prospects                                     |
| <input type="checkbox"/> Appraisal                     | <input type="checkbox"/> Keys/Alarm Codes   |
| <input type="checkbox"/> Brief Description of Property | <input type="checkbox"/> Management Company ( <i>Name, Address, Phone</i> )             |
| <input type="checkbox"/> Survey                        | <input type="checkbox"/> Rent Roll & Expenses   |
| <input type="checkbox"/> Location Map/Site Map         | <input type="checkbox"/> Condo Documents ( <i>if applicable</i> )                       |
| <input type="checkbox"/> Tax Bills                     | <input type="checkbox"/> Property Disclosure ( <i>addendum</i> )                        |
| <input type="checkbox"/> Reserve Prices                | <input type="checkbox"/> Leases/Tenant Information ( <i>Name &amp; Phone</i> )          |
| <input type="checkbox"/> Real Estate Agency Disclosure | <input type="checkbox"/> Referrals  |

***Please provide these items upon acceptance of Agreement or shortly thereafter as we cannot effectively promote your property without this important information.***

## **EXHIBIT A**

# **GILMORE DECLARATION**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

	)	
<b>In re</b>	)	<b>Chapter 11</b>
	)	
<b>18 Audubon Place, LLC,</b>	)	<b>Case No. 18-12232</b>
	)	
<b>Debtor.</b>	)	<b>Section A</b>
	)	
	)	

**DECLARATION UNDER PENALTY OF PERJURY  
OF GILMORE AUCTION & REALTY CO.**

Mr. David E. Gilmore, as representative of GILMORE AUCTION & REALTY CO. (“Gilmore Auction”), being duly sworn, deposes and says as follows:

1. Gilmore Auction believes that it is a disinterested person, as such term is defined in Section 101(14) of the Bankruptcy Code and as required under Section 327(a) of the Bankruptcy Code and does not hold or represent an interest adverse to the Bankruptcy Estate of 18 Audubon Place, LLC or its Trustee.

2. Gilmore Auction has no connection to the Bankruptcy Estate of 18 Audubon Place, LLC, its Trustee.

3. Gilmore Auction believes that it does not represent or hold any interest materially adverse to the Bankruptcy Estate or its Trustee with respect to the matters for which Gilmore Auction would be retained. Gilmore Auction and its affiliates are not related to the Trustee by affinity or consanguinity within the third degree, as determined by the common law; nor are they in a step or adoptive relationship with the Trustee within such degree.

On the 2 day of November, 2018, I declare under penalty of perjury that the foregoing is true and correct.

Gilmore Auction & Realty Co.

By: /s/ David E. Gilmore

Name: David E. Gilmore

Title: President