

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

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IROQUOIS NURSING HOME, INC.

Plaintiff

Hon. Anthony J. Paris

-against-

Index No. 2012/6444  
RJI No.: 33-13-1366

JAMES MONTO, III, DAVID FALCI and  
THOMAS FALCI

Notice of Cross  
Motion

Defendants.

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MOTION BY:

Thomas Falci and David Falci

DATE, TIME  
AND PLACE OF  
HEARING:

May 15, 2013 at 10:00 a.m.  
Onondaga County Supreme Court  
Onondaga County Courthouse  
401 Montgomery St.  
Syracuse, NY 13202


SUPPORTING PAPERS:

Answer of Defendants and Cross  
Motion to Dismiss

RELIEF REQUESTED:

Dismiss complaint against defendants  
Thomas Falci and David Falci

Dated: April 30, 2013

  
PETER E. McLELLAN  
Attorney for Defendants  
1117 East Genesee Street  
Syracuse, NY 13210  
(315) 425-6161

RECEIVED  
4/30/13

MM 45 PD  
4/30/13

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

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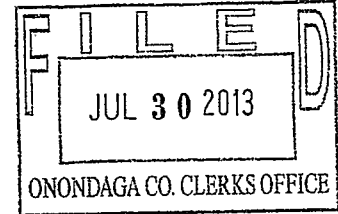
IROQUOIS NURSING HOME, INC.

Plaintiff

-against-

JAMES MONTO, III, DAVID FALCI and  
THOMAS FALCI

Defendants.



Index No. 2012/6444

RJI No.: 33-13-1366

Answer and Cross  
Motion

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Defendants Thomas Falci and David Falci, by their attorney, Peter E. McLellan, for their answer to Plaintiff's Motion to Compel Discovery, state as follows:

1. None of the items identified in Plaintiff's Discovery Demand as numbers 5, 6 or 7 are in the possession of defendants Thomas Falci or David Falci.
2. Defendants Thomas Falci and David Falci have provided Plaintiff with all documents in their possession relative to this action.

Cross Motion to Dismiss

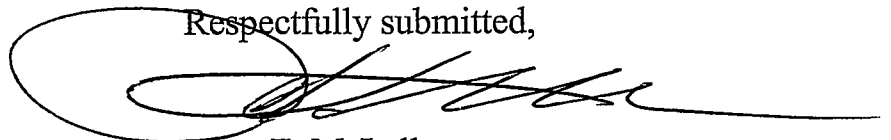
3. Defendants Thomas Falci and David Falci purchased the premises at 304 Wayland Road, Town of Salina, County of Onondaga, State of New York from Anna E. Poplawski for \$55,000.00. A copy of the Offer to Purchase is attached as Exhibit "A."

4. The purchase price was determined based on market value analyses prepared by two independent licensed Realtors, John Disque of Keller Williams and Katherine Clare Bell of Coldwell Banker Prime Properties. Copies of the Realtor reports are attached as Exhibit "B."
5. The sale was completed without the involvement of a Realtor and the standard 7% Realtor commission did not have to be paid.
6. The purchase was consummated by tender of an Official Bank Check for \$54,873.91 payable to Ann Poplawski. Copy attached as Exhibit "C."
7. The closing was conducted by attorney James J. Wallace.
8. Defendants have no other involvement in this matter.
9. It is unclear why Plaintiff has named Thomas Falci and David Falci as defendants other than an attempt to apply pressure upon defendant James Monto.
10. As such, the naming of Thomas Falci and David Falci as defendants is an abuse of process.

Wherefore Defendants Thomas Falci and David Falci request an Order pursuant to CPLR Rule 3211 dismissing, with prejudice, the Plaintiff's complaint against Defendants Thomas Falci and David Falci

Dated: April 30, 2013

Respectfully submitted,



Peter E. McLellan  
Attorney for Defendants  
1117 East Genesee Street  
Syracuse, NY 13210  
(315) 425-6161

TO: Menter, Rudin & Trivelpiece, P.C.  
Josephine Yang-Payti, of Counsel  
Attorneys for Plaintiffs  
308 Maltbie Street, suite 200  
Syracuse, NY 13204

## OFFER TO PURCHASE

I (We) agree to purchase the following property situate in the Town of Salina, County of Onondaga, State of New York known as 304 Wayland Road, being a single family residence (for a more detailed description of the property reference is hereby made to the deed thereof) together with all lighting, heating and plumbing fixtures, window shades, screen and storm doors and windows, if any, water heater, water meter and all fixtures and fittings belonging to or used in the operation of the property and owned by you.

AT THE PRICE OF FIFTY FIVE THOUSAND and 00/100 Dollars (\$55,000.00), payable as follows;

\$ 500.00 check deposited with Seller, to be held until this offer is accepted, at which time it shall become part of the purchase price, or returned if not accepted.

\$54,500.00 cash on or before closing on passing of deed.

The Seller shall deliver to the Buyer, no later than fifteen (15) days prior to the Contract Closing Date, existing abstract of title prepared by a title or abstract company authorized to do business in this State, made from the records in the County Clerk's office, and commencing with a warranty or better deed conveying 100% fee interest and recorded no later than 40 years prior to the date of the Contract (or no later than 1945 if the property is within Onondaga County), and existing survey, showing the property free and clear of all liens and encumbrances, except as herein set forth, and except building and use restrictions, pole and wire easements of record, and subject to zoning ordinance and to any taxes for local improvements not now completed.

Transfer is to be completed at the office of an attorney for a party on or about October 15, 2010 or as soon thereafter as the abstracts can be brought to date. At that time you are to convey to me by Warranty deed, good title to the property free of all liens and encumbrances, except as above set forth, subject to rights of tenants, if any.

Interest, water, insurance premiums, rents and taxes shall be pro-rated and adjusted as of closing.

City, State and County Taxes shall be adjusted and apportioned on a calendar year beginning January 1, and ending Dec. 31. School Taxes outside the city shall be adjusted and apportioned for the fiscal year beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>, and Village Taxes shall be adjusted and apportioned for the fiscal year beginning June 1<sup>st</sup> and ending the last day of May following or as otherwise provided by law.

Possession of premises shall be delivered on or before closing on passing of deed.

Buyer shall pay the applicable mortgage tax and deed and mortgage recording fees. Seller shall pay for the recording fees for any mortgage discharge, gains tax affidavit, and any title affidavit required, as well as the transfer tax, and any real property gains tax applicable to the transaction.

The risk of loss or damage to the property by fire or other causes until the delivery of the deed is assumed by you.

I (We) represent that there is no broker in this transaction and that no real estate broker or agent has helped to bring about this sale.

This offer, when accepted, shall be a binding contract. It shall bind the parties hereto and their respective executors, administrators, distributees, successors and assigns.

# Suggested Offer



Prepared for Anna Poplawski

## Market Statistics...

<u>Sell Price Statistics</u>	<u>Sell Price Per Sq. Ft. Statistics</u>	
Average Price: \$56,700	Average Price/Sq Ft: \$65400.00 x 1,00	\$65,400
High Price: \$59,000	High Price/Sq Ft: \$64.87 x 1,008	\$79,400
Median Price: \$56,000	Median Price/Sq Ft: \$75.64 x 1,008	\$76,200
Low Price: \$55,000	Low Price/Sq Ft: \$40500.00 x 1,00	\$40,500


Figures are based on selling price after adjustments, and rounded to the nearest \$100.

## Summary...

Analysis of the selected comparable properties suggest similar properties are selling in the price range of: **\$55,000 to \$59,000**

**Recommended Purchase Price: \$56,700**

**John Disque, Keller Williams**  
2501 James Street, Syracuse, NY 13206



September 01, 2010

Anna Poplawski

Dear Anna,

I appreciate the opportunity to provide you with a Comparative Market Analysis for your property. Prepared exclusively for you, this analysis contains a summary of the recent real estate transactions in your area for properties that are similar to yours. While none of the properties included in this analysis is exactly like yours, they do provide a good basis by which to compare your property with the 'competition'.

The following pages contain descriptions of each property whether it is currently available for sale, recently sold, or was listed but did not sell. A short description of each property is provided, followed by a summary table of each property's key features, which allows you to easily compare the features of your property with others in your area.

Your property may have special features or improvements that could substantially affect the price range in which it should be listed. We will discuss pricing in more detail after you have had a chance to review the enclosed information.

Please give me a call if you have any questions or would like any additional information. I look forward to working with you and selling your property quickly.

Sincerely,

**John Disque**  
**Keller Williams**  
2501 James Street  
Syracuse, NY 13206  
Office: 315-701-6900 Cell: 315 345 6633  
Fax: 315-410-5370  
[DisqueJohn@aol.com](mailto:DisqueJohn@aol.com)

September 03, 2010

Jimmy Monto

Dear Jimmy,

I appreciate the opportunity to provide you with a Comparative Market Analysis for your property. Prepared exclusively for you, this analysis contains a summary of the recent real estate transactions in your area for properties that are similar to yours. While none of the properties included in this analysis is exactly like yours, they do provide a good basis by which to compare your property with the 'competition'.

The following pages contain descriptions of each property whether it is currently available for sale, recently sold, or was listed but did not sell. A short description of each property is provided, followed by a summary table of each property's key features, which allows you to easily compare the features of your property with others in your area.

Your property may have special features or improvements that could substantially affect the price range in which it should be listed. We will discuss pricing in more detail after you have had a chance to review the enclosed information.

Please give me a call if you have any questions or would like any additional information. I look forward to working with you and selling your property quickly.

Sincerely,

**Katherine Clare Bell**  
**COLDWELL BANKER PRIME PROPERTIES**  
6800 E. Genesee Street  
Fayetteville, NY 13066  
Office: 315-446-2910 Cell: 315-569-8558  
Fax: 315-446-0494  
[katclarebell@cbpp.com](mailto:katclarebell@cbpp.com)  
Web Site: [www.katclarebell.com](http://www.katclarebell.com)

# Pricing Your Property



Prepared for Jimmy Monto

## General Facts About Pricing...

There are certain factors that are within our control and some factors beyond our control when it comes to setting the price. Those factors within our control are: the appearance of the property, how aggressively we market the property and the price. Factors outside our control are: location of property, size and local amenities. It's important to accept those factors that are beyond our control and focus on the pricing and preparation.

A property priced at market value will attract more buyers than a home priced above market value. Consider that a competitively priced property will also attract a greater number of potential buyers and increase your opportunity for a quick sale.

## Market Statistics...

<u>Sell Price Statistics</u>	<u>Sell Price Per Sq. Ft. Statistics</u>	
Average Price: \$62,500	Average Price/Sq Ft: \$63.76 x 1,008	\$64,300
High Price: \$66,100	High Price/Sq Ft: \$70.79 x 1,008	\$71,400
Median Price: \$62,200	Median Price/Sq Ft: \$61.20 x 1,008	\$61,700
Low Price: \$57,200	Low Price/Sq Ft: \$58.24 x 1,008	\$58,700

Figures are based on selling price after adjustments, and rounded to the nearest \$100.

## Summary...

Analysis of the selected comparable properties suggest similar properties are selling in the price range of: **\$57,200 to \$66,100**

**Recommend Price: \$62,500**

**Katherine Clare Bell, COLDWELL BANKER PRIME PROPERTIES**

6800 E. Genesee Street, Fayetteville, NY 13066

Office: 315-569-8558 | Cell: 315-569-8558 | Fax: 315-446-0494

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HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

**OFFICIAL CHECK**

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

**M&T Bank**  
Manufacturers and Traders Trust Company  
BUFFALO, N.Y. 14240

10-4/220

DAVID FALCI  
WRITER

DATE 09/24/2010

PAY TO THE ORDER OF ANN POPLAWSKI \$ 54,873.91

\*\*\*FIFTY FOUR THOUSAND EIGHT HUNDRED SEVENTY THREE and 91/100\*\*KUSDollars

#2035 - Dewitt

TWO AUTHORIZED SIGNATURES REQUIRED FOR AMOUNTS \$10,000.00 & OVER

*David Falci*  
*Ann Poplawski*

100389833 02200046 17001019915934

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
RESERVED FOR FINANCIAL INSTITUTION USE

ENDORSE HERE

*David Falci*

Check Number: 100389833  
Account Number: 17001019915934  
Amount: \$54,873.91

FEDERAL RESERVE NOTE - D. OWEN HINDS

Posting Date 2010 Sep 24

Research Seq # 2100870599

Account # 17001019915934

Check/Store # 100389833

DB/CR DB

Dollar Amount \$54,873.91

Bank # 096

Branch # 00030

Deposit Acct # 15004195212087

Record Type # 01

STATE OF NEW YORK  
COUNTY OF ONONDAGA SUPREME COURT

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IROQUOIS NURSING HOME, INC.,

Plaintiff,

-vs-

JAMES MONTO, III, a/k/a JAMES MONTO,  
Individually and as Executor of the ESTATE OF  
ANNA POPLAWSKI, DAVID FALCI and  
THOMAS FALCI,

Defendants.

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**KATHLEEN POPLAWSKI'S  
AFFIDAVIT IN OPPOSITION  
OF DAVID FALCI AND  
THOMAS FALCI'S CROSS  
MOTION TO DISMISS THE  
ACTION**

Index No.: 2012-6444

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

Kathleen Poplawski. being duly sworn, deposes and says:

1. I am married to John Poplawski, one of Anna Poplawski's children. I was one of Anna's daughters-in-law. I was familiar with Anna Poplawski's care and finances before James Monto, III took over control and possession of Anna Poplawski's assets and income.

2. John Poplawski, my husband, was appointed Anna Poplawski's ("Annie") agent under a Power of Attorney in late December 1992, before James Monto, III ("Jimmy"), was appointed one of her agents pursuant to the Power of Attorney dated August 16, 2010. A copy of the Power of Attorney is annexed hereto as Exhibit "1".

3. When John served as Annie's agent under a Power of Attorney, I assisted John and Annie in taking care of Anna's affairs and getting Anna's bills paid. I paid bills for Annie. I initiated Annie's first Medicaid application for her in

1995 when the Pace program became available. She never went through with it because her grandson (Jimmy Monto) told her that she would lose her home, we spoke to the authorities of the program and the house was going to be protected and was to remain in the family. Little did she know he was going to be the one to take it.

4. August of 2010, Jimmy told me by cell phone that he was going to take care of Annie's finances. Jimmy was only to make sure her bills were paid. He wanted Annie to execute a new Power of Attorney appointing him and Joan A. Rankin as agents and that they would have to act together. John and I thought that it was acceptable because both agents would act together. We felt comfortable with Joan because we trusted that she would do right by Annie.

5. We later found out that Jimmy told Joan that there could only be one POA. Joan told me of that conversation.

6. On or about October 20, 2010, Jimmy sent John and Annie's other children a letter concerning Annie's health and finances. A copy of this letter is annexed hereto as Exhibit "2". Jimmy told us that Annie's house was going to stay in the family, specifically; he and David Falci were going to buy this house and fix up this house. Jimmy handled the sale of Annie's house as Annie's agent. Jimmy signed the deed.

7. On December 9, 2010, I sent Jimmy an e-mail about a call from National Grid about Annie's account at Annie's house, which I then believed that was owned by Jimmy. Jimmy said in his reply to me that he changed Annie's

account over to him and David in October 2010. A copy of the e-mail exchange between me and Jimmy is annexed hereto as Exhibit "3".

8. In Feb of 2011, I called National Grid about my account at my house. The customer service representative asked me which account I called about. I was the contact person on her account. I was confused by the question. Then I was told that Annie's account, which I helped set up, was still active, contrary to Jimmy's statement to me in December 2010. On that same day (February 27, 2011), I told them to disconnect the service. Service was disconnected March 14, 2011.

9. I believe that from October 2010 through March 2011, during the period Jimmy was supposedly the new owner of Annie's house, Annie's HEAP benefits were forwarded to National Grid, even though Annie already first moved into Green Point, assisted living facility, on November 10, 2010 and then Iroquois Nursing Home.

10. Contrary to what Jimmy told all of us, we later found out that Jimmy did not purchase the house from Annie; it was David and Thomas Falci. Despite his justifications, Jimmy sold Annie's house to David and Thomas Falci for less than the appraised value (less than the appraisals that Jimmy obtained). Jimmy handled the transactions and gave David and Thomas Falci a good deal.

11. Therefore, I believe that David and Thomas Falci, as owners of Annie's house, benefited from Annie's HEAP benefits.

12. On November 28, 2011, I received a Decision and Notice from Medicaid. I received it because I initiated Medicaid in 1995. I was told by Jimmy to rip it up. I called the Medicaid caseworker and I was told by K. Brennen that she

sympathized with us because of Annie's gambling problems; Jimmy told Medicaid that Annie had a gambling problem. Daily withdrawals were taken from the ATM at the Turning Stone Casino as his explanation as to how some of Annie's money had dissipated..

13. Annie did not gamble and the time frame given by the caseworker was when Annie was already a full-time resident at Iroquois from January 2011 until November 13, 2011 when she passed away. She left the nursing home only to go to doctor appointments and maybe once or twice with her daughter Sharon Monto.

14. When Annie was at Iroquois, Jimmy told us that he was paying the bill for Annie. Much later, I learned that Jimmy did not bother to pay Iroquois with Annie's resources and monthly income. We know that Jimmy handled the sale proceeds for Annie's house and received Annie's monthly income. But we did not know what he did with Annie's money. Annie or her care provide certainly did not benefit from Annie's money.

15. Also, I was told by Jimmy and other family members that Jimmy put a lot of money, about \$20,000, to fix up and update Annie's house.

16. I believe that Jimmy used Annie's money to improve Annie's house, which Jimmy sold to David and Thomas Falci. Therefore, I believe, as owners of the house, David and Thomas Falci benefited from Annie's assets. Jimmy's father, Jay, mother, Sharon and brother Jason all worked on gutting, cleaning and remodeling the home. Jay and Jason were unemployed and I'm sure Jimmy was paying them something and I feel it was her (Annie's) money.

17. After Annie passed away on November 13, 2011, I asked Jimmy if we should have a reading of Annie's will. He said Annie had no will.

18. I learned that Jimmy was arrested and arraigned April 9, 2012 for allegedly falsifying payroll records and allegedly evading taxes based on the altered payroll records. Jimmy was terminated from his job with the Syracuse City School District. It appeared that Jimmy had no job and no assets. We met with John's sisters at Tully's in July, 2012, including Sharon, John wanted his sisters to know what Jimmy did to their mother. None of them were too surprised because of his track record. Jimmy lied to them as well.

19. In June 2012, we learned that Annie's bills for her stay at Iroquois were not paid and that Iroquois sought to open an estate for Annie. Suddenly, we all learned that Jimmy, contrary to what he told me earlier, that Jimmy had the Annie's original will dated November 3, 2010. Jimmy's father, who resides with Jimmy and David Falci were witnesses of this will. A copy of the will that Jimmy produced is annexed hereto as Exhibit "4".

20. I compared Annie's signature on the POA dated August 2010 and her signature on the will dated November 2010 that David Falci witnessed. It appears that in her gradually deteriorating state, (she was deemed legally blind a decade ago) Annie's signature improved rather dramatically. I don't believe Annie signed this will. But I believe David Falci can tell us whether Annie did or not.

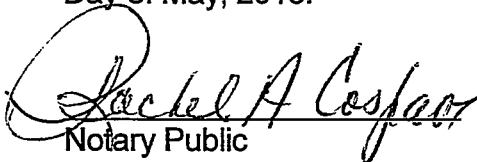
21. Jimmy tried to probate this will in response to Iroquois' petition, he wanted all the children of Annie to sign off (later I found out that he told his Aunts that he was trying to get some Veterans money for them that was entitled). Jimmy

told the Court and with an affidavit from a process server that she served John personally with Jimmy's petition at our house when John was out of town. John produced receipts showing him on a business trip in St .Louis, Mo. when he was supposedly served with Jimmy's petition.

22. Based on what I know, I believe that David Falci and Thomas Falci at least indirectly, knowingly or unknowingly, benefited from Annie's assets, which should have been used to pay her bills.

  
Kathleen Poplawski

Sworn to before me this 10<sup>th</sup>  
Day of May, 2013.

  
Notary Public

RACHEL A. COSGRAVE  
Notary Public, State of New York  
No. 01CO4745640  
Qualified in Onondaga County  
Commission Expires ~~June 30, 2013~~

Aug 1, 2015

## **DURABLE POWER OF ATTORNEY FOR FINANCIAL MANAGEMENT**

### **WARNING TO PERSON EXECUTING THIS DOCUMENT - THE POWERS YOU GRANT BELOW CONTINUE TO BE EFFECTIVE SHOULD YOU BECOME DISABLED OR INCOMPETENT**

**CAUTION:** This is an important legal document and upon proper execution will create a Durable Power of Attorney. This gives the person whom you designate as your attorney-in-fact broad powers to handle your property during your lifetime, which may include powers to mortgage, sell, or otherwise dispose of any real or personal property without advance notice to you or approval by you.

These powers will continue to exist even if you become disabled or incompetent. You do have the right to terminate or revoke the power of attorney and any or all powers granted within at any time up to the point of your incapacity.

This document does not authorize anyone to make medical or other health care decisions. You may execute a health care proxy (also known as a health care or medical power of attorney) to do this.

If there is anything about this document that you do not understand, you should ask a lawyer to explain it to you.

### **CAUTION TO THE PRINCIPAL:**

Your Power of Attorney is an important document. As the "principal," you give the person whom you choose (your "agent") authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

~~When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. "Important Information for the Agent" at the end of this document describes your agent's responsibilities.~~

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney by executing this Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of

sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, [www.senate.state.ny.us](http://www.senate.state.ny.us) or [www.assembly.state.ny.us](http://www.assembly.state.ny.us).

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

**THIS DURABLE POWER OF ATTORNEY for financial management** is given by me, Anna E Poplawski, presently of 304 Wayland Road, Syracuse, in the State of New York, on the 16<sup>th</sup> day of August, 2010.

1. **Nature of Power**

THIS IS A DURABLE POWER OF ATTORNEY and the authority of my Attorney-in-fact shall not terminate if I become disabled or incapacitated or in the event of later uncertainty as to whether I am dead or alive.

2. **Previous Power of Attorney**

I REVOKE any previous durable power of attorney granted by me.

3. **Agents**

I APPOINT James J Monto III, of 164 Forest Hill Drive, Syracuse, New York, and Joan A Rankin, of 119 Flordale Road, Liverpool, New York, to act jointly and independently as my Agents. Upon the death, refusal or inability of James J Monto III or Joan A Rankin to act or continue to act as my Agent, the remaining Agent will continue acting as my Agent in sole capacity.

4. **'My Agent'**

I will refer to my Agents and my successor Agent as 'my Agent'.

5. **Governing Laws**

This instrument will be governed by the laws of the State of New York. Further, my Agent is directed to act in accordance with the laws of the State of New York at any time he or she may be acting on my behalf.

6. **Delegation of Authority**

My Agent may not delegate any authority granted under this document.

7. **Liability of Agent**

My Agent will not be liable to me, my estate, my heirs, successors or assigns for any action taken or not taken under this document, except for willful misconduct or gross negligence. A successor Agent will not be liable for acts of a prior Agent

8. **Effective Date**

This Power of Attorney will start immediately and will continue notwithstanding my mental incapacity or mental infirmity which may occur after my execution of this Power of Attorney.

9. **Powers of Agent**

My Agent will have the following power(s):

Initials

X      a. **Real Estate Transactions**

*CP*

To deal with any interest I may have in real property and sign all documents on my behalf concerning my interest, including, but not limited to, real property I may subsequently acquire or receive. These powers include, but are not limited to, the ability to:

- i. purchase, sell, exchange, accept as gift, place as security on loans, convey with or without covenants, rent, collect rent, sue for and receive rents, eject and remove tenants or other persons, to pay or contest taxes or assessments, control any legal claim in favor of or against me, partition or consent to partitioning, mortgage, charge, lease, surrender, manage or otherwise deal with real estate and any interest therein, and
- ii. execute and deliver deeds, transfers, mortgages, charges, leases, assignments, surrenders, releases and other instruments required for any such purpose.

X      b. **Chattel and Goods Transactions**

*CP*

To purchase, sell or otherwise deal with any type of personal property I may currently or in the future have an interest in. This includes, but is not limited to, the power to purchase, sell, exchange, accept as gift, place as security on loans, rent, lease, to pay or contest taxes or assessments, mortgage or pledge.

X      c. **Banking Transactions**

*CP*

To do any act that I can do through an agent with a bank or other financial institution. This power includes, but is not limited to, the power to:

- i. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, retirement plan accounts, and other similar accounts with financial institutions.
- ii. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, negotiating or endorsing any checks or other instruments with respect to any such accounts, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.
- iii. Borrow money from any banking or financial institution if deemed necessary by my Agent, and to manage all aspects of the loan process, including the placement of security and the negotiation of terms.
- iv. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.
- v. Have access to any safe deposit box that I might own, including its contents.
- vi. Create and deliver any financial statements necessary to or from any bank or financial institution.

*Claudia M. RUA*  
 CLAUDIA M. RUA  
 Notary Public, State of New York  
 Qualified in Onondaga Co. No. 01RU6089543  
 My Commission Expires March 24, 20

X      *a* **d. Business Operating Transactions**

To take any action my Agent deems necessary with any business that I may own or have an interest in by doing any act which can be done through Agent. This power includes, but is not limited to, the power to execute, seal and deliver any instrument; participate in any legal business of any kind; execute partnership agreements and amendments; to incorporate, reorganize, consolidate, merge, sell, or dissolve any business; to elect or employ officers, directors and agents; and to exercise voting rights with respect to any stock I may own, either in person or by proxy.

X      *a* **e. Insurance Transactions**

To do any act that I can do through an agent with any insurance policy. This power includes, but is not limited to, the power to pay premiums, start, modify or terminate policies, manage all cash payouts, borrow from insurers and third parties using insurance policies as collateral, and to change the beneficiaries on any insurance policies on my life. Unless my Agent was already a beneficiary of any policy before the signing of this document, my Agent cannot name himself or herself as a beneficiary of such policy.

X      *a* **f. Estate Transactions**

To do any act that I can do through an agent with regard to all matters that affect any trust, probate estate, conservatorship, or other fund which I may receive payment as a beneficiary. This power includes the power to disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate. However, my Agent cannot disclaim assets to which I would be entitled, if the result is that the disclaimed assets pass directly or indirectly to my Agent or my Agent's estate.

X      *a* **g. Living Trust Transactions**

To transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer. This property can include real property, stocks, bonds, accounts, insurance policies or other property.

X      *a* **h. Claims and Litigation Matters**

To institute, maintain, defend, compromise, arbitrate or otherwise dispose of, any and all actions, suits, attachments or other legal proceedings for or against me. This power includes, but is not limited to, the power to: appear on my behalf or retain an attorney and any other professional personnel necessary to defend or assert any claim before any court, board, or tribunal, and the power to settle any claim against me in which ever forum or manner my Agent deems prudent, and to receive or pay any resulting settlement.

X      *a* **i. Government Benefits**

To act on my behalf in all matters that affect my right to allowances,

*Claudia M. RJA*  
CLAUDIA M. RJA  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RU6089543  
My Commission Expires March 24, 20 11

compensation and reimbursements properly payable to me by the Government of the United States or any agency or department thereof. This power includes, but is not limited to, the power to prepare, file, claim, defend or settle any claim on my behalf and to receive and manage as my Agent sees fit any proceeds of any claim.

X   a   j. Retirement Benefit Transactions

To act for me and represent my interests in all matters affecting any retirement savings or pension plans I may have. This power includes, but is not limited to, the power to continue contributions, change contribution amounts, change investment strategies and options, move assets to other plans, receive and manage payouts, and add or change existing beneficiaries. My Agent cannot add himself or herself as a beneficiary unless he or she is already a designated beneficiary as of the signing of this document.

X   a   k. Family Care

To make whatever expenditures are required for the maintenance, education, benefit, medical care and general advancement of me, my spouse and dependent children, and other persons that I have chosen or which I am legally required to support, any of which may include my Agent. This power includes, but is not limited to, the power to pay for housing, clothing, food, travel and other living costs.

X   a   l. Tax Matters

To act for me in all matters that affect my local, state and federal taxes and to prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authority to:

- i. prepare, sign and file income and other tax returns with federal, state, local and other governmental bodies, and to receive any refund checks.
- ii. obtain information or documents from any government or its agencies, and represent me in all tax matters, including the authority to negotiate, compromise, or settle any matter with such government or agency.

X   a   m. Maintain Property and Make Investments

To retain any assets owned by me at the date this Durable Power of Attorney becomes effective, and the power to reinvest those assets in similar investments. In addition, my Agent may invest my assets in any new investments, of his or her choosing, regardless of whether or not they are authorized by any applicable legislation.

X   a   n. Employ Required Professionals

To appoint and employ any agents, servants, companions, or other persons, including nurses and other health care professionals for my care and the care of my spouse and dependent children, and accountants, attorneys, clerks, workers and others for the management, preservation and protection of my property and

*Claudia M. RUA*  
CLAUDIA M. RUA  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RU6089543  
My Commission Expires March 24, 20 11

estate, at such compensation and for such length of time as my Agent considers advisable.

X   a   **General Authority**

*Claudia M. Rúa*  
CLAUDIA M. RUA  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RU6089543  
My Commission Expires March 24, 20 11

To do any act or thing that I could do in my own proper person if personally present, including managing or selling tangible assets, disclaiming a probate or nonprobate inheritance and providing support for a minor child or dependent adult. Other specifically enumerated powers are not intended as a limitation on this broad general power.

10. **Agent Compensation**

My Agent will receive no compensation except for the reimbursement of all out of pocket expenses associated with the carrying out of my wishes.

11. **Co-owning of Assets and Mixing of Funds**

My Agent may not mix any funds owned by him or her in with my funds and all assets should remain separately owned if at all possible.

12. **Personal Gain from Managing My Affairs**

My Agent is not allowed to personally gain from any transaction he or she may complete on my behalf.

13. **Agent Restrictions**

This Power of Attorney is not subject to any conditions or restrictions other than those noted above.

14. **Notice to Third Parties**

Any third party who receives a valid copy of this Power of Attorney can rely on and act under it. A third party who relies on the reasonable representations of an Agent as to a matter relating to a power granted by this Power of Attorney will not incur any liability to the principal or to the principal's heirs, assigns, or estate as a result of permitting the Agent to exercise the authority granted by the Power of Attorney up to the point of revocation of the Power of Attorney. Revocation of the Power of Attorney will not be effective as to a third party until the third party receives notice and has actual knowledge of the revocation.

15. **Severability**

If any part of any provision of this instrument is ruled invalid or unenforceable under applicable law, such part will be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this instrument.

I, **Anna E Poplawski**, being the Principal named in this Durable Power of Attorney for Finances hereby acknowledge:

1. I have read and understand the nature and effect of this Durable Power of Attorney.
2. I recognize that this document gives my Agent broad powers over my assets, and that these powers will continue past the point of my incapacity.
3. I am of legal age in the State of New York to grant a Durable Power of Attorney.

4. I am voluntarily giving this Durable Power of Attorney and recognize that the powers given in this document will become effective as of the date of my incapacity or as specified within.

IN WITNESS WHEREOF I hereunto sign my name at the City of Syracuse, in the State of New York, this 16<sup>th</sup> day of August, 2010

SIGNED, SEALED, AND DELIVERED in the presence of:

Sharon A. Mento  
WITNESS

Address: 164 Jonathill Dr.  
Syracuse N.Y. 13206

Linda Russo  
WITNESS

Address: 1634 Danforth St  
Syr. Ny. 13208

Anna E Poplawski  
*Anna E. Poplawski*

*Claudia M. Ruc*

CLAUDIA M. RUA  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RUG089543  
My Commission Expires March 24, 20 11

**NOTARY ACKNOWLEDGEMENT**

State of New York )  
 ) ss.

County of Onondaga )

On this 16<sup>th</sup> day of August, 2010, before me, the undersigned, personally appeared Anna E Poplawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual, acted, executed the instrument.

Claudia M. Rua  
Notary Public

My commission expires: March 24, 2011

CLAUDIA M. RUA  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RU6089543  
My Commission Expires March 24, 2011

**IMPORTANT INFORMATION FOR THE AGENT:**

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
- (4) keep a record or all receipts, payments, and transactions conducted for the principal; and
- (5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manner:

(Principal's Name) by (Your Signature) as Agent; or

(Your Signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or give major gifts to yourself or anyone else unless the principal has specifically granted you that authority in this Power of Attorney or in a Statutory Major Gifts Rider attached to this Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

**Liability of agent:**

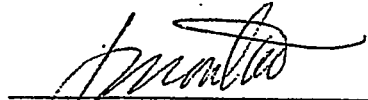
The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

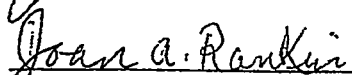
**AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:**

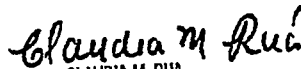
It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

We, James J Monto III, and Joan A Rankin, have read the foregoing Power of Attorney. We are the persons identified therein as agents for the principal named therein.

We acknowledge our legal responsibilities.

  
 \_\_\_\_\_  
 James J Monto III

  
 \_\_\_\_\_  
 Joan A Rankin

  
 CLAUDIA M. RUC  
 Notary Public, State of New York  
 Qualified in Onondaga Co. No. 01RU6089543  
 My Commission Expires March 24, 2011



## **Instructions for Executing your Power of Attorney**

Before signing your Power of Attorney, ensure you have read it and understand your document.

To be valid, you must sign the document with your usual check signing signature. You should also initial each page of the document. The signing and the initialing of the pages must occur in the presence of your notary or witness(es). For every power that you have given to your Agent you must write your initials in the space provided. If this is not done it may affect the validity of your document.

After you have signed and initialed your document in front of your notary or witness(es), your notary or witness(es) must sign on the applicable page of the Power of Attorney and should initial each page. This must occur in the presence of you.

Most jurisdictions require that a Power of Attorney be signed before a Notary Public if it is durable or grants power over land or property. Some jurisdictions also require that witnesses be present. Even if they are not required for your state it is often recommended to have witnesses to make the document more acceptable to those that will have to deal with it. Those jurisdictions that do not require that the Power of Attorney be signed in front of a notary usually require that two witnesses are used. Even if a notary is not required it is still often recommended.

Remember that your witness(es) cannot be your spouse, partner, child, your attorney or alternate attorney, or the spouse of your attorney or alternate attorney. Some jurisdictions disallow witnesses that are mentioned in your will, either as beneficiary or executor/executrix. You should generally avoid having witnesses that have any financial relationship with you. The witness(es) must be of legal age in your jurisdiction, they must have capacity and be mentally capable of managing their property and making their own decisions.

If your Power of Attorney will be used to transfer real property (land) your Agent will likely need to have the document recorded in order for the Power of Attorney to be recognized. This takes place at the land registry office in the jurisdiction where the real property (land) is located.

**WITNESS CERTIFICATE**

I, Linda Russo, currently residing at 1034 Danforth St, in the City of Syr., in the State of New York, hereby acknowledge that:

1. I witnessed the signing of the Power of Attorney of Anna E Poplawski dated this 8-16-10 day of August, 2010.
2. I am an adult with capacity to witness the signing of the Power of Attorney.
3. In my opinion Anna E Poplawski had the capacity to understand the nature and effect of the Power of Attorney at the time the Power of Attorney was signed and signed it freely and voluntarily without any compulsion or influence from any person.
4. I am not the Attorney named in the Power of Attorney nor am I the Attorney's spouse or other family member.

Linda Russo  
(Signature of witness)

8-16-10  
(Date)

Claudia M. Rua  
CLAUDIA M. RUA  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RU6089543  
My Commission Expires March 24, 20 11

**WITNESS CERTIFICATE**

I, Sharon A. Monto, currently residing at 164 Junecothell Drive, in the City of Syracuse, in the State of New York, hereby acknowledge that:

1. I witnessed the signing of the Power of Attorney of Anna E Poplawski dated this 14 day of August, 2010.
2. I am an adult with capacity to witness the signing of the Power of Attorney.
3. In my opinion Anna E Poplawski had the capacity to understand the nature and effect of the Power of Attorney at the time the Power of Attorney was signed and signed it freely and voluntarily without any compulsion or influence from any person.
4. I am not the Attorney named in the Power of Attorney nor am I the Attorney's spouse or other family member.

Sharon A. Monto  
(Signature of witness)

8/16/10  
(Date)

Claudia M. Ruc  
CLAUDIA M. RUC  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01RU6089543  
My Commission Expires March 24, 20 11

James Monto  
164 Forest Hill Drive  
Syracuse, New York 13206

October 20, 2010

Shirley Pawlewitz  
Joan Rankin  
Eleanor Goldthwait  
Linda Russo  
Sharon Monto  
John Poplawski

Because it seemed to be too difficult to try and explain this all to each one of you separately, I thought the best way to go through the on-goings of the past couple of months would be in a single written communication. As I'm sure I don't need to explain; the goal here has been to make the last months or years of her life comfortable utilizing the limited resources that she has available.

### New Residency

Effective November 1, 2010 my grandmother will move to the Green Point facility at 150 Old Liverpool Road, Apartment 416. Her phone number will remain the same as it has always been. Although this was a very difficult decision for her to make, it is in the best interest of her safety and well-being. Residents at Green Point receive 3 meals a day, all cleaning of their apartments, laundry service, assistance in bathing and other daily activities, along with regular interaction with the other residents of the facility.

### Sale of Her Home

The property at 304 Wayland Road has been sold, effective 10/1/10 for a sale price of \$55,000, minus any legal fees, and fees assessed by the County of Onondaga. This price was based upon two separate and independent evaluations performed on the home by both Coldwell Banker and Keller Real Estate. Both agencies evaluated the property, inside and out and offered suggested listing prices. Due diligence for Solicitation of Offers from independent brokers was also performed, the best offer I received from an independent broker was under \$44,000.

Considering the commission costs, and the costs to make necessary repairs to make the house saleable; the most viable option was to sell the house in 'as is' condition. This allowed for me to sell the house without incurring commission, inspection costs, official appraisals, nor were any repairs necessary prior to the sale. Unfortunately, the home in several areas is in disrepair, and its marketability was limited, at best.

Luckily, David and I were in a position to quickly purchase the home from her, saving her both precious time and money. Over the next few months, the home will be fixed and rented, and will remain in the family for the length of my life.

For the most part, she will be able to take her material possessions with her to her new home, including most furniture, her clothing and personal items. I have begun the process of cleaning out a great deal of clothing, trash, and other misc items.

## Proceeds and Finances

Because the sale was a cash transaction, there was no lengthy period of time to get the sale completed, and the proceeds are available for her immediate use. The proceeds have been deposited in draw accounts, immediate-use savings accounts and short-term interest bearing certificates of deposit.

The proceeds of the sale of her home will go directly to her care for the rest of her life. Along with her monthly benefits from Social Security, I have also applied for and will continue to follow up on the following:

### Veterans Affairs Benefits for War Time Veterans' Survivors

*Unbeknownst to me, she has been eligible for these benefits since the moment she was deemed legally blind a decade ago. Unfortunately, the benefits are not retroactive and will begin when she is officially approved by the Bureau. I will meet with a benefits representative from the Bureau on October 21<sup>st</sup>, along with an attorney, to file all necessary paperwork requesting assistance.*

### Supplemental SSI Benefits

*Because her income is so limited, there are supplemental benefits available through Social Security, her eligibility is yet to be determined.*

### Medicaid

*Should she outlive the funds that she has available, or should she need to go to a skilled nursing facility, Medicaid will begin to pay for care. Because of the lengthy waiting period for Medicaid approval, the only way for her to gain eligibility was for her to 'spend down' the proceeds of the sale of her home.*

### Medicare Part D Prescription Benefits

*Also unbeknownst to me, her health insurance coverage with Emerson Electric Company has been an unnecessary expense for the past eighteen years. Because she is eligible for Medicare Part D, she could have been paying a small amount for prescription coverage. The enrollment period for Medicare begins on November 15<sup>th</sup>; at that time, with the help of her new attorney, I will apply for this coverage and hopefully lower her insurance costs dramatically.*

I am in hopes that she will receive some financial assistance from all of these agencies, and will be able to stay at Green Point for as long as she is physically able to do so. The Veteran's Affairs Benefits looks most promising, and although it takes a great deal of time for the paperwork to be processed, I am nothing less than hopeful at this time.

## Health

She has received three clean bills of health from her doctors over the past month, and is scheduled for another appointment in two weeks. Her medications have not changed, and the status of her health has remained consistent. With the exception of a pretty nasty leg infection this past week, she is doing remarkably well. Her noticeable decline over the past 6 months is due to aging versus any acute medical conditions. Unfortunately, time does not stop. She is doing well for being almost a century old, but it's a daily struggle for her to live on her own.

While at Green Point, I will continue to monitor and manage her prescriptions. Although this is not an ideal situation, the cost for Green Point to provide this service was exorbitant, so in an effort to save her some money, I will continue to do this.

## Final Expenses

On October 1<sup>st</sup>, an amortized custodial trust account with Shepardson Funeral Home in the amount of \$9000.00 was opened; these funds will stay in that account with Shepardson until the time of her death. At that time, the money will be transferred to the funeral home to pay for her final expenses. Should she live for a number of years, the interest on the trust account will amply cover any inflationary charges. An 'Appointment of Agent to Control Disposition of Remains' has been signed and filed with the funeral home, her attorney, and Onondaga County; at the time of her death I will have sole discretion over the disposition of her remains and the services henceforth.

The small amount of life insurance that she had remaining (\$2450.00 cash value) has been cashed out and put towards her burial. The actual monthly cost of the insurance policies would have exceeded their final value, so this was in her best interest to utilize it now instead of continuing to pay into a policy that was undervalued compared to the monthly cost.

---

If I have left anything out, or there are questions that arise from any of the information above, everyone knows where I live...and my phone numbers.

I am in hopes that this transition will be a positive change to her life, and a positive change for all of those that are involved with her care.

Regards,

Jimmy

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Jimmy

RE: nimo

Page 1 of 1

From: Monto, James  
To: Kathleen Poplawski  
Date: Thursday, December 09, 2010 9:51:41 AM  
Subject: RE: nimo

Ugh, I just sent them money yesterday. They are ridiculous, the whole HEAP thing is what held it up, and it just came through yesterday. (I had to switch it over to us in October, but I was not about to pay the full boat on the months that she owed before the HEAP came through.)

*[Faint, illegible text]*

*[Faint, illegible text]*

*This is where he told me he switched  
it over-*

**From:** Kathleen Poplawski [mailto:kpoplawski@lyncourt.cnyric.org]  
**Sent:** Thursday, December 09, 2010 9:33 AM  
**To:** Monto, James  
**Subject:** nimo

Hey Jim, Ni mos credit dept. has called me twice this week looking for Ann Poplawski can you at some point take care of that. thanks, how was the city? How about all this snow? call me sometime. k

## LAST WILL AND TESTAMENT

I, ANNA E. POPLAWSKI, having also been known at various times as Ann E. Poplawski, Anne L. Poplawski and Anna L. Poplawski, residing at the Hearth at Greenpoint, 150 Old Liverpool Road, Liverpool, New York, do make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me.

**FIRST:** I direct that all my funeral, burial and administration expenses and taxes imposed on my estate be paid from the assets of my estate as soon as practicable without any apportionment otherwise required by law.

**SECOND:** I give, devise and bequeath all of my real property and personal property, including, but not limited to, household furniture, furnishings, equipment and appliances, and any motor vehicles, including insurance covering or relating to all such property, and including property over which I may have the power of appointment to my children and stepchildren, to wit: SHIRLEY PAWLEWITZ, JOAN RANKIN, ELEANOR GOLDTHWAIT, LINDA RUSSO, SHARON MONTTO and JOHN B. POPLAWSKI.

**THIRD:** I appoint my grandson, JAMES J. MONTTO, III, of Syracuse, New York, to be the Executor of this, my Will. I give unto my Executor and any successor, in addition to the powers conferred by law, full power and authority to sell, exchange, mortgage, lease and convey the whole or any part of my real and personal property, and to execute, acknowledge and deliver deeds and other proper instruments of conveyance thereof, and to make distribution in cash or in kind, in real or personal property or partly in each, including undivided interests, even though shares be composed differently. I direct that my Executor and any successors shall serve without

bond or other security in any jurisdiction.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 3 day of

November, 2010.

Anna Poplawski  
ANNA E. POPLAWSKI

We, whose names are hereto subscribed, do certify that on the 3 day of November, 2010, ANNA E. POPLAWSKI, the Testatrix subscribed her name to this instrument of two pages, in our presence and in the presence of each of us, and at the same time, in our presence and hearing, declared the same to be her Last Will and Testament, and requested us and each of us to sign our names thereto as witnesses to the execution thereof, which we hereby do in the presence of the Testatrix and of each other, on the day of the date of said Will, and write opposite our names our respective places of residence.

Thomas J. W. [Signature] residing at 164 Forest Hill Dr  
Syracuse NY 13206

David Falci residing at 164 Forest Hill Dr.  
Syracuse NY 13206