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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

*****~~CONCILIATION~~*****

In the Matter of the Interest Arbitration

between

City of Rochester
Public Employer

and

Rochester Police Locust Club
Employee Organization

PERB Case No: IA2009-037
M2009-024

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* OPINION
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* AND
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* AWARD
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Before:

Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

Sharon A. Burke
Public Employer Panel Member

Michael D. Mazzeo
Public Employee Organization Panel Member

APPEARANCES

For the Public Employer
Yvette Chancellor Green, Esq.

For the Public Employee Organization
Lawrence J. Andolina, Esq.

BACKGROUND

On April 6, 2010 pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board

("PERB", to make a just and reasonable determination of a dispute between the City of Rochester ("City") and the Rochester Police Locust Club ("Union").

The City of Rochester is a municipal corporation located in Monroe County on Lake Ontario. With a population of approximately 210,000 as of the 2010 census, the City is third largest City in New York State. It encompasses over 36 square miles and is an educational, health and cultural center. The City of Rochester borders Lake Ontario on the north, the Towns of Brighton and Irondequoit on the east, and the Towns of Gates and Greece on the west.

The Union is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants, and Captains that are employed by the City, exclusive of sworn employees assigned to and working in the office of the Chief of Police, the Chief's Aide, the commanding officer of the Professional Standards Section, the commanding officer of the Research and Evaluation Section.

At present, pursuant to the City Budget, the Rochester Police Department ("Department") is comprised of an authorized strength of 740

sworn full-time positions, with an additional 170 civilians working in various bureaus of the Department.

The last collective bargaining agreement between the parties covered the period which commenced on July 1, 1997 and ended on June 30, 1999. Thereafter, the parties were subject to an Interest Arbitration Award for the period commencing July 1, 1999 and ending June 30, 2001 [*Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA99-021]. A second Interest Arbitration Award covered the period commencing July 1, 2001 and ending June 30, 2005 [*Matter of City of Rochester and Rochester Police Locust Club*, PERB Case No. IA2001-028]. A third Interest Arbitration Award covered the period from July 1, 2005 ending June 30, 2008 [*Matter of City of Rochester and Rochester Locust Club*, PERB Case No. IA2006-009].

Before the expiration of the period covered by the third Award, the parties began negotiations for a new agreement. Impasse was declared in 2009. The parties then participated in mediation sessions with a PERB Mediator. The mediation was not successful and the Union, on or about March 4, 2010, filed a Petition for Interest Arbitration. The City filed its Response on or about March 23, 2010, along with an Improper Practice Charge (U-29915). The parties were able to resolve most of the disputed issues set forth in the Improper Practice Charge and those remaining were submitted to a PERB and were subsequently resolved.

The undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the Civil Service Law, for the purpose of making a just and reasonable determination of the dispute. Hearings on the open issues were conducted on January 26 and 28, 2011 at which the parties presented their positions on their outstanding proposals. At these sessions, both parties were represented by counsel and by other representatives. The parties submitted numerous and extensive exhibits and documentation, and both parties set forth extensive arguments in support of their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, and arguments on the issues submitted by both parties. After lengthy discussion and deliberations at Executive Sessions, and additional study and review, the Panel reached agreement on the terms of this Interest Arbitration Award utilizing the statutory criterion. The parties extended the jurisdiction of the Panel and requested that a five (5) year Award be issued. Accordingly, set out herein is the Panel's Award utilizing the statutory criterion set forth below as to what constitutes a just and reasonable determination of the parties' contract for the period July 1, 2008 through June 30, 2013.

THE STATUTORY STRUCTURE

Subdivision 4 of Section 209 of the Civil Service Law was enacted to provide a means for resolving negotiation impasses between public

employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a petition requesting referral to a Panel contain:

- (3) a statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were resolved by agreement and as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearings on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria, which must be taken into consideration, when relevant.

In arriving at its determination, the Panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically,
 - (1) hazards of employment;
 - (2) physical qualifications;
 - (3) educational qualifications;
 - (4) mental qualification;
 - (5) job training and skills
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to make a proper determination of wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities."

The Rochester Police Department is located in Monroe County, and the City of Rochester is one of the four major cities in upstate New York. The Union, consistent with its position in earlier Interest Arbitration proceedings maintained generally that the Rochester Police should be compared with other Monroe County local Police Departments that are either contiguous or very close geographically to the City: specifically, Brighton, Greece, Irondequoit and Webster. Current salary and benefits information from these cited jurisdictions were presented by the Union for the Panel's review.

The Union argues that the police in the surrounding towns are most comparable to the Rochester Police because the full-time Police Departments located in Monroe County, including the Rochester Police

Department, receive the same initial training, have similar job requirements, similar duties, and generally perform the same functions of road patrol and investigative work. However, the Union notes that while inner core suburban crime statistics can resemble those of cities, there can be no dispute based on the record evidence that the Rochester Police handle more violent crimes on a regular basis than any of the suburban departments. These suburban departments are nevertheless better paid than the Rochester Police, and should be considered as comparables.

The Union further argues that the cities of Albany, Buffalo, and Syracuse are geographically distant, which makes the best comparables the surrounding Town Police Departments. The Union notes that the Rochester Police Department workforce is drawn from the Rochester metropolitan area. Rochester Police Officers compete with other officers employed in Brighton, Greece, Irondequoit and Webster for housing and jobs and have the same cost of living expenses.

The City contends that if there are comparables to the Rochester Police Department, they are to be found in the other large cities in upstate New York: Albany, Buffalo, and Syracuse. It is the City's position that these larger upstate New York cities have an environment that is closer to the City of Rochester than the suburban communities or cities cited by the Union. The City contends that members of the Rochester Police Department share little in common in terms of duties, tasks, and problems faced by police in

suburban communities. It is therefore inappropriate to compare Rochester salaries to those of suburban police, given the fact that the suburban police perform very different jobs under vastly different circumstances. The City also takes the position that the financial situation of the City of Rochester and the large upstate cities selected by the City as comparables differs in very significant ways from the financial situation enjoyed by growing suburban towns. These suburban towns not only enjoy an increasing residential tax base but are also not responsible for a city-wide school district as is the City of Rochester. The City urges the Panel to adopt the reasoning employed in the last Interest Arbitration Awards and find that the most appropriate comparables to the City are the upstate New York cities of Albany, Buffalo, and Syracuse.

Panel Determination

The Panel has reviewed the arguments set forth by the parties on the issue of comparability as well as determinations made on the issue in prior Interest Arbitration Awards in 1999-2001 and 2001-2005, and believes the evidence continues to support the prior determinations on this matter. Hence, the Panel finds that the Rochester Police Department has as its primary comparables the police departments in the other major upstate New York cities of Albany, Buffalo, and Syracuse. In stating this conclusion, the Panel also however takes note of the fact that, in the words of the

1999-2001 Award, it will consider "to a lesser extent, those police departments in the surrounding Monroe County suburban communities." Such has been the analysis for comparables employed in arriving at this Award.

DETERMINATION OF THE ISSUES

Salary

The Union is seeking increases in salaries for all members of the bargaining unit of 3.5%, 2.0% 4.0% and 5.5% in a four-year Award. It is also seeking improvements in the longevity payments increasing initial payments after three years of service from \$100 to \$200 per year and from an additional \$100 to \$125 per year for the next 22 years and \$300 for subsequent years with a maximum payment of \$3,470.00. The Union believes these increases are necessary to maintain the comparative position of its members with those in similar cities and with other departments in the region.

The Union further argues that the proposed salary increases are reasonable given the demanding and dangerous nature of the work that members of the Rochester Police Department perform. The Union contends that there is no dispute as to the important work its members perform in providing public safety in an urban area that is extremely dangerous at times. The risk to Police Officers in such an environment

must address the risks as well. The City of Rochester can be characterized as disproportionately violent. In almost all categories the crime statistics for the City of Rochester are higher than the national average for similar cities. The City's murder rate is higher than either Buffalo or Syracuse and is higher than New York City. The risks this represent to Police Officers and the daily challenges that arise as a result must be recognized in the salary of these officers in the Award.

The Union further believes that salaries must be kept competitive to enable the City to recruit quality officers. The City is competing not only with other larger cities in New York but with suburban Police Departments in Monroe County. If salaries are not kept competitive as proposed by the Union it will lead to the best recruits choosing other area departments.

The City has proposed salary increases of 3.0%, 1.0%, 2.0% and 3.0% for the first four years of the Award with lesser increases in any subsequent years as its financial resources are projected to be under considerable stress for a number of years. The City of Rochester has witnessed a 30% decline in population between 1970 and 2009 from 296,233 to 207,294 according to census. While the number of overall full-time employees has declined some 11% in the last decade the Police Department has actually seen an increase of 5% to 741 Officers making it one of the largest funded Departments in the City at 76.9 million

dollars. Any increase in salary for the members of the bargaining unit thus has a substantial impact on the budget as it represents a large expenditure given the Department's size.

The City is confronted with declining State aid and flat to declining tax and other revenues. Personnel costs especially for pensions and medical insurance are increasing substantially and are projected to continue to do so for the foreseeable future. The result is projected budget gaps starting in 2011-12 with \$50 million and increasing to over \$100 million by 2014-15. The tremendous financial difficulties faced by the City limit its ability to pay the increases sought by the Union. The City and its taxpayers simply do not have the resources to support increases in salary of the size sought by the Union.

The City wants to recruit and support the best Police Officers and believes its proposed increases in salary will do so over the life of the Award. These salary increases will also maintain the competitive position of Police Officers in Rochester with their counterparts in Buffalo and Syracuse and, importantly, allow the City to keep the force at the size necessary to provide good police services for the citizens of the City.

DETERMINATION

The Panel has carefully reviewed the arguments and extensive data submitted by the parties. The Panel recognizes the important and extremely dangerous work that is performed by the members of the Union in providing for the safety of the citizens of the City. The Panel is aware of the increasing number of injuries and deaths among Police Officers in upstate New York in recent years in the performance of their duties. The Panel also recognizes the need to maintain competitive salaries to recruit and retain good officers in such an environment.

The Panel must also consider and balance the City's ability to pay and the genuine fiscal constraints faced by the City. The City faces a significant budget gap that is likely to grow over the next few years. It is attempting to take appropriate steps to address the budget problems while still trying to maintain a high quality of services for its citizens. Its taxpayers while able to bear the burden of its current tax rates have themselves suffered from the recent recession. These concerns must be balanced against the need to pay a fair and adequate salary to its Police Officers for the important work they perform. The Panel must also take into account comparability when assessing what constitutes a fair and reasonable wage increase.

The Panel has carefully considered all of these factors in arriving at its Award. The increases that will be awarded by the Panel keep the City Police

essentially in their same relative positions with respect to compensation in comparison to the comparables in the large upstate New York cities. It does so without imposing an unreasonable or unfair burden on the City's taxpayers. The Panel believes longevities should remain as per the existing Agreement. In making this salary determination the Panel has considered all the financial data and arguments presented by both parties and has applied such data to the criteria mandated by statute as set forth in Section 209.4 of the Civil Service Law. Accordingly, and after due consideration of that criteria, the Panel makes the following Award:

AWARD

- 1. Effective July 1, 2008 and retroactive to that date the base salary schedule shall be increased by 3.0%.**
- 2. Effective July 1, 2009 and retroactive to that date the base salary schedule shall be increased by 3.0%.**
- 3. Effective July 1, 2010 and retroactive to that date the base salary schedule shall be increased by 2.5%.**
- 4. Effective July 1, 2011 and retroactive to that date the base salary schedule shall be increased by 1.0%.**
- 5. Effective July 1, 2012 the base salary schedule shall be increased by 1.0%.**

Wages are retroactive for active duty personnel and retired personnel who retired on or after July 1, 2008.

Public Safety Aides (Article 34)/Special Events (Article 15)

The City has proposed changes in the language of Article 34 governing the use of Public Safety Aides (“PSA”) to monitor video surveillance cameras in the City. The City proposes the deletion of sections of the Article which limits the number of such aides and that requires the City to maintain the authorized number of bargaining unit positions that existed on November 11, 1997 (674). The City argues it needs greater flexibility given current fiscal concerns to utilize PSA’s for purposes of surveillance than is afforded under the existing language as interpreted in recent arbitral decisions.

(GR08-432)

The Union has also proposed changes to the provisions of Article 34 which would further limit the number of PSA’s from 40 to 20 that can be utilized by the City and would clarify the need to have sworn members of the Unit on duty with aides. The Union argues public safety as well bargaining unit security suffer when aides perform duties that should be worked by better qualified members of the Unit.

The parties also have proposed changes in the provisions of Article 15, Section 6 of the Collective Bargaining Agreement addressing Special Events Overtime which again arises out of the City’s need for flexibility in staffing and the Union’s legitimate concern about maintaining members’ negotiated benefits. The Union argues that the contract is clear and supported by a

series of Arbitration Awards (GR06-408, GR08-434, GR-09-436, GR09-441) that there is an established procedure for the assignment of staff to special events based on seniority that must be followed. The City, while acknowledging that there are contractual procedures, contends the Police Chief has sole discretion to determine use of an on-duty officer for events and this must be recognized and that the City needs such flexibility to provide the services required for such special events.

The Panel has carefully considered the arguments of the parties on these similar contractual concerns and has also reviewed the prior arbitration awards which have interpreted these provisions in the Collective Bargaining Agreement. Any changes in either of these provisions would have a financial impact on members of the bargaining unit. With respect to Article 34 it would go to whether the City has the right to utilize PSA's in the camera room with no requirement for sworn personnel to also be assigned as the Arbitration Awards may now be interpreted as requiring. This change would represent a substantial loss of work for members of the union in the future and would result in significant savings to the City. While the savings are harder to determine with respect to any changes in the provisions of Article 15, Section 6 governing Special Events, they would also exist for the City.

In light of the current and future fiscal problems confronting the City, the Panel is of the opinion a modification of Article 34 is warranted that

would provide the City has the right to utilize PSA's in the camera room with no requirement for sworn personnel to also be assigned to the camera room. The PSA's will not conduct investigations as is prohibited in Article 34, Section 1. This change in light of the arbitration award referenced above will give added flexibility to the City and cut current and future costs. With respect to Special Events, the Panel believes the existing provisions of Article 15, Section 6 as interpreted by previous arbitration Awards are being followed and should remain as per the existing Agreement.

Insofar as there is potentially substantial short-term and long-term savings for the City that arise out of the change awarded by the Panel in Article 34 and a financial loss for Unit members as it represents a change in the Arbitration Award's interpretation, the Panel believes a one-time payment of \$1,000 not on base should be paid to each active Unit member to compensate. This Award shall also constitute a complete settlement of any remaining claims or issues from grievance awards cited above (GR09-438) including past or future compensation.

AWARD

- 1. (Article 34) The City has the right to utilize PSA's in the camera room with no requirement for sworn personnel to also be assigned to the camera room. PSA's will not conduct investigations as prohibited by Article 34, Section 1.**

Any perceived violations will be addressed by the parties or as grievances. The Award shall also

constitute a complete settlement of any remaining claims or issues from prior grievance Awards (GR08-432, GR06-408, GR08-434, GR09-436, GR09-441 and GR09-438).

2. (Article 15, Section 6) There will be no change in Section 6 of Article 15 as interpreted by previous Arbitration Award.

3. A \$1,000 lump sum payment not on base to each active Unit members.

Performance Enhancement Allowance (Article 3, Section 11)

The Union has proposed the deletion of the provisions governing performance enhancement payments in Article 3, Section 11 of the Collective Bargaining Agreement. The Union argues these monies would be better spent on general salaries given the fiscal limitations of the City in the current economic environment. The Union contends these monies could help offset salary increases in the out years of the Award.

The City has argued that these monies awarded on an annual basis to individual Police Officers for enhanced performance are important as they represent recognition for outstanding service. The City thus proposes there be no change in the current provisions of Article 3, Section 11 of the Collective Bargaining Agreement in the Award.

The Panel has studied the arguments put forth by the parties on this issue. While the Panel would agree with the City that recognition of

outstanding service is important, the fiscal limitations of the City require that scarce financial resources be allocated to general salaries so as to ensure that the City can recruit and maintain the best Police Officers. The Panel would therefore award that Article 3, Section 11 will be deleted from the Collective Bargaining Agreement and no further payments shall be made pursuant to this Section.

AWARD

- 1. Article 3, Section 11, Performance Enhancement Allowance, shall be deleted in its entirety from the Collective Bargaining Agreement and no further payments shall be made pursuant to this Section.**

Release Time for Club Business (Article 26)

The Union has proposed changes in current provisions of Article 26 that would increase the number of hours of release time from 1,000 hours to 2,000 hours for a member to perform approved Club business. The Union also seeks to have an additional elected Union officer granted release in order to help in the administration of the Club's business. The Union argues this additional release time and executive officer are necessary to perform approved Club business which is of benefit to the City. The Health Committee on which the Union works with the City to maintain the current health insurance plan has resulted in savings to the City but requires

significant hours of work by Union representatives. These efforts benefit both parties.

The City does not believe additional release time either by way of hours or in the form of additional release of a Union officer is necessary and represents added costs in a period when the City is facing enormous financial problems. The City asks the Panel to reject any proposed changes in Article 26 that would increase release time for Club business.

The Panel has reviewed the parties' arguments and supporting data on the issue of release time for Club business and believes some additional time is warranted. The Union works with the City in containing the cost of health insurance and this has produced benefits for both parties but requires significant time from the representatives of both the City and the Union. An increase in release time from 1,000 hours to 2,000 hours in Section 1 of Article 26 would help the Union to provide more time for this joint effort.

AWARD

- 1. (Article 26, Section 1) The maximum hours of release time in Section 1 shall be changed from 1,000 hours per contract year to 2,000 hours per contract year.**

Dental

The Union has proposed replacement of the existing GHI dental plan with a new Guardian Dental Plan. The Union argued the new plan would provide enhanced benefits and with no additional costs. The City was opposed to such a change as the GHI plan was good and any change would increase the administrative workload of the City's benefits office and would require a change as well in the existing Health Care MOA. A further review of the Guardian plan did reveal that there would be a savings to the City with such a change.

The Panel has also reviewed the information concerning the Guardian Dental Plan and believes it represents a beneficial change for the Union membership while providing a savings to the City. The Panel therefore would award the following.

AWARD

- 1. The Guardian Dental Plan will replace the current dental plan in the parties' Collective Bargaining Agreement.**

OTHER ISSUES

The Union and the City have had discussions on clarifying procedures related to General Order 210 which is referenced in Article 8, Section 1 of

the Collective Bargaining Agreement. There is a general agreement that General Order 210 should be changed to reflect an understanding as to the treatment of members on limited duty assignments. The Panel after reviewing General Order 210 is of the opinion a change is necessary as well to ensure the proper treatment of officers on limited duty. The Panel would thus Award that General Order 210 be changed so that members on limited duty assignments who have been injured on duty will not have their hours or R-days changed, unless by agreement between the Chief of Police and the President of the Union as their designees.

AWARD

- 1. (Article 8, Section 1) Change in General Order 210 that members on limited duty assignments who have been injured on duty will not have their hours or R-days changed, unless by agreement between the Chief of Police and the President of the Union as their designees.**

REMAINING ISSUES

The Panel has reviewed in detail all of the demands and proposals of both parties, as well as the extensive supporting data in the record. The

fact that some of these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not studied and considered in the overall context of contract terms and benefits by the Panel. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties and believes they are best left to future negotiations between the parties. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

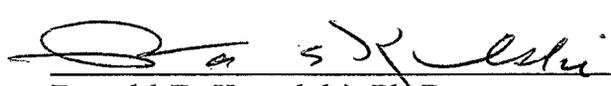
Except for those proposals and/or items previously agreed upon by the parties, any proposals and/or items other than those specifically modified by this Award are rejected.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

DURATION OF CONTRACT

The Panel has been specifically authorized by the parties to exceed the two-year maximum contract duration as provided by the Taylor Law in Section 209.4 (c)(vi). This Award therefore provides an Agreement for the period commencing July 1, 2008 and ending June 30, 2013.



Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

10/20/11
Date of Award

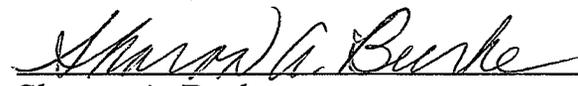
[Concur]
[Dissent]



Michael D. Mazzeo
Public Employee Organization Panel Member

10-14-11
Date of Award

[Concur]
[Dissent]



Sharon A. Burke
Public Employer Panel Member

10/14/11
Date of Award

State of New York)
) SS:
County of Onondaga)

On this 20 day of October, 2011 before me personally came and appeared Ronald E. Kowalski, Ph.D., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Julie A. Stenger

(Notary Public

JULIE A. STENGER
Notary Public, State of New York
No. 01ST5073025
Qualified in Onondaga County
Commission Expires February 10, 2015

State of New York)
) SS:
County of Monroe)

On this 14 day of October, 2011 before me personally came and appeared Michael D. Mazzeo, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Nancy Alberto

Notary Public

NANCY A ALBERTO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01AL5045749
QUALIFIED IN WAYNE COUNTY
COMMISSION EXPIRES JUNE 26, 2015

State of New York)
) SS:
County of Monroe)

On this 14 day of October, 2011 before me personally came and appeared Sharon A. Burke, to me known and known to me to be the individual described in the foregoing instrument, and she acknowledged to me that she executed the same.

Nancy Alberto

Notary Public

NANCY A ALBERTO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01AL5045749
QUALIFIED IN WAYNE COUNTY
COMMISSION EXPIRES JUNE 26, 2015