

**ORDER OF COMMISSION**SECRETARY OF STATE  
COMMISSIONS DIVISION

In the matter of Objection Nos. 006-121 filed by the St. Louis District Council of Greater St. Louis and Vicinity on April 6, 2012, to Annual Wage Order No. 19, pertaining to the occupational title of Carpenter in the counties of Adair – Section 001, Andrew – Section 002, Atchison – Section 003, Audrain – Section 004, Barry – Section 005, Barton – Section 006, Bates – Section 007, Benton – Section 008, Bollinger – Section 009, Boone – Section 010, Buchanan – Section 011, Butler – Section 012, Caldwell – Section 013, Callaway – Section 014, Camden – Section 015, Cape Girardeau – Section 016, Carroll – Section 017, Carter – Section 018, Cass – Section 019, Cedar – Section 020, Chariton – Section 021, Christian – Section 022, Clark – Section 023, Clay – Section 024, Clinton – Section 025, Cole – Section 026, Cooper – Section 027, Crawford – Section 028, Dade – Section 029, Dallas – Section 030, Daviess – Section 031, Dekalb – Section 032, Dent – Section 033, Douglas – Section 034, Dunklin – Section 035, Franklin – Section 036, Gasconade – Section 037, Gentry – Section 038, Greene – Section 039, Grundy – Section 040, Harrison – Section 041, Henry – Section 042, Hickory – Section 043, Holt – Section 044, Howard – Section 045, Howell – Section 046, Iron – Section 047, Jackson – Section 048, Jasper – Section 049, Jefferson – Section 050, Johnson – Section 051, Knox – Section 052, Laclede – Section 053, Lafayette – Section 054, Lawrence – Section 055, Lewis – Section 056, Lincoln – Section 057, Linn – Section 058, Livingston – Section 059, McDonald – Section 060, Macon – Section 061, Madison – Section 062, Maries – Section 063, Marion – Section 064, Mercer – Section 065, Miller – Section 066, Mississippi – Section 067, Moniteau – Section 068, Monroe – Section 069, Montgomery – Section 070, Morgan – Section 071, New Madrid – Section 072, Newton – Section 073, Nodaway – Section 074, Oregon – Section 075, Osage – Section 076, Ozark – Section 077, Pemiscot – Section 078, Perry – Section 079, Pettis – Section 080, Phelps – Section 081, Pike – Section 082, Platte – Section 083, Polk – Section 084, Pulaski – Section 085, Putnam – Section 086, Ralls – Section 087, Randolph – Section 088, Ray – Section 089, Reynolds – Section 090, Ripley – Section 091, St. Charles – Section 092, St. Clair – Section 093, Ste. Genevieve – Section 094, St. Francois – Section 095, St. Louis City – Section 096, St. Louis County – Section 100, Saline – Section 101, Schuyler – Section 102, Scotland – Section 103, Scott – Section 104, Shannon – Section 105, Shelby – Section 106, Stoddard – Section 107, Stone – Section 108, Sullivan – Section 109, Taney – Section 110, Texas – Section 111, Vernon – Section 112, Warren – Section 113, Washington – Section 114, Wayne – Section 115, Webster – Section 116, Worth – Section 117 and Wright – Section 118; issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State on March 9, 2012.

**I. Introduction**

On April 6, 2012, the St. Louis District Council of Greater St. Louis and Vicinity (Objector), filed a valid, timely objection to the Occupational Title of Work Descriptions, that appears at 8 CSR 30-3.060, pertaining to the occupational title of Carpenter, 8 CSR 30-3.060(8)(D). Objector seeks to amend the occupational title to define carpenter as follows<sup>1</sup>:

(D) Carpenter---Applies to workers who construct, erect, install and repair structures, structural members and fixtures including but not limited to those

<sup>1</sup> Objector's proposed language is reprinted in its entirety. All typographical and/or grammatical errors have been preserved herein. The underlined portions represent language Objector seeks to add to the work description, and the struck-through portions represent language Objector seeks to delete from the work description.

made of wood, plywood, wall board and materials that take the place of wood, such as plastic, metals, composites, fiberglass, and Transit sheeting and Cemesto Board, using carpenter hand tools and power tools. The work falling within this occupational title of work description includes:

1. The layout of buildings or structures on the site or plot. The installation of ~~aluminum~~ expansion joints including those made of aluminum for buildings and bridge structure as well as concrete strike-off machines;
2. The making and setting of all concrete forms (except curb forms on heavy construction), including establishment of building lines or flow lines ~~(including box culverts, bridges)~~ including and footing forms. The making of all forms used in tilt-up construction. The layout, installation and construction for wall forms and footing forms, all block-outs, including wood or steel, layout and installation of all embedded items.
3. The building and handling of scaffolds used by carpenters to work from. All scaffolding, constructed or assembled, fourteen feet six inches (14' 6") and higher for normal or specialty use---regardless of purpose;
4. The building of ~~rough~~ rough wooden structures (including rough), such as concrete forms, scaffolds, wooden bridges, trestles, coffer dams, tunnel and sewer support; welding and burning;
5. The selection of specified type of lumber or other materials. Prepare layout, using rule, framing square and calipers and other devices. Mark cutting and assembling lines on materials, using pencil, chalk and marking gauge and other tools. Shape materials to prescribed measurements, using saws, chisels and planes and other tools. Assemble, cut and shape materials and fasten them together with nails, dowel pins or glue or by other means. Erect framework for structures. Verify trueness of structure with plumb bob and carpenter's level or other tools. Apply paneling (including decorative paneling) to walls;
6. The installation of ladders, handrails, walkways, platforms and gangways made of wood and other materials as well as shoring and lagging. Install doors and wood and metal windows. and bucks, including hardware (bucks are rough frames in which finished frames are inserted) in building framework and brace them with boards nailed to framework. Unloading and installation of all wood, metal, aluminum, and vinyl windows. The unloading and installation of all curtain wall systems. The unloading and installation of all store front systems including installation of store front glass. The unloading and installation of wood, metal, aluminum, and vinyl skylights and skylight systems. Install pallet racks and metal shelving. Install subflooring in buildings. Install insulation such as batt, board, safig, thermal, styrofoam, sound attenuation, fiberglass when the installation of the insulation material is not being applied as an integral part of the roofing system. Nail plaster grounds (wood or metal strips) to studding. Fit and nail

sheathing on outer walls and roofs on buildings. Install beams and trusses ~~of~~including wood laminate.

7. The making, handling and setting of all frames, sash, blinds, trim and other fixtures (for example, cabinets, bookcases and benches), when made of wood or any wood substitute. The handling and assembly of chairs, seats, bleachers and benches and other furniture in theaters, halls, schools and other places of assemblage on floors of any kind. Install protection screens, chalk boards, toilet partitions (plastic laminate, solid plastic). Caulking of fixtures and countertops including ~~Cenax~~ tub and shower enclosures;

8. The unloading and installation of all wood, aluminum, and metal bleachers including related platforms and walkways. The unloading, and installation, setting, bolting-up, plumbing-up, welding and installing of structural steel, including any field fabrication when it applies to bleachers of any material.

9. ~~8.~~ The installation of wood and metal studs and exterior panels. The unloading of all finished items installed by carpenters;

10. ~~9.~~ The handling, cutting, sawing, fitting of drywall (sheetrock) and lead-lined drywall whether for walls, ceilings, floors, soffits or any use, no matter how installed---nailed, screwed, glued or otherwise (interior, exterior). Lead-lined drywall is used in X rays to avoid radiation exposure. Install corner guards and wooden and plastic column covers;

11. ~~10.~~ The handling and installation of acoustical and egg crate ceiling systems in its entirety (hanger wire, grid, molding, tile) whether vertically or horizontally installed;

12. ~~11.~~ The installation of all builders hardware, including door tracks of every description. The installation of all weather strips. The making, fitting and hanging of fly screens for doors, windows and other openings;

13. ~~12.~~ Installation of wood and hollow metal doors, rollup garage doors, overhead doors or rolling fire doors, automatic doors, channel iron door bucks, glass sliding and bi-fold doors; and

14. ~~13.~~ The installation of access flooring, computer floors and raised or elevated floors. Install modular headwall units and laboratory casework and fume hoods;

In response to the filed objection, motions to intervene were filed on behalf of

- The Eastern Missouri Laborers' District Council and its affiliated Local Unions (Laborers);
- The International Association of Bridge Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 10 (Iron Workers No. 10);

- Painters District Council No. 2, Painters District Council No. 3, and Glaziers Local No. 513 (Painters and Glaziers);
- International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local No. 396 (Iron Workers No. 396);
- Plumbers and Pipefitters Local No. 562 (Plumbers and Pipefitters);
- Cement Masons, Local No. 527 (Cement Masons);
- Bricklayers & Allied Crafts Local Union 15 MO/KS and Bricklayers and Allied Crafts Administrative District Council of Eastern Missouri (Bricklayers); and
- Sheet Metal Workers Local No. 36 and Sheet Metal Workers Local No. 2 (Sheet Metal Workers)

On May 15, 2012, pursuant to 8 CSR 20-5.010(3), a prehearing conference was convened on the above-referenced objection for the purpose of aiding in the disposition of the hearing. A prehearing order was prepared pursuant to 8 CSR 20-5.010(3)(B), by the Commission's designated representative and Staff Counsel, Ross Ball.

Pursuant to § 290.262.4 RSMo, all parties were notified of the hearing, which was conducted on June 4, 2012, in Jefferson City, Missouri. Presiding at the hearing were Commissioners, William F. Ringer, James Avery, and Curtis E. Chick, Jr. Staff Counsel, Ross Ball and David Talley, were present as legal advisors to the Commission. Objector, the Division, and all intervenors were represented by counsel. The parties stipulated to the admissibility of the pre-filed testimony and exhibits.

## **II. Evidence Presented**

### *The Division's Evidence*

The Division offered as evidence the prepared direct testimony of Carla Buschjost, Director of the Missouri Division of Labor Standards, and referenced exhibits.

Ms. Buschjost testified on behalf of the Division and established that the current definition for the occupational title of "Carpenter" is provided in the Missouri Code of State Regulations at 8 CSR 30-3.060(8)(D).

During cross-examination, Ms. Buschjost testified that the purpose of the occupational titles of work descriptions is to assist in assigning work to the most appropriate occupational title so that parties know what wage rate to use when bidding on public works projects.

Counsel for Objector presented Ms. Buschjost with a series of hypotheticals involving jobs which require work similar to that described in more than one occupational title. Counsel asked Ms. Buschjost how the Division would determine which occupational title the job would be classified. Ms. Buschjost testified that the Division looks at each particular job and determines

which occupational title's work is more incidental to the completion of the job and assigns the job to that occupational title. Ms. Buschjost stated that every job is different and, therefore, the Division evaluates each job on a case-by-case basis.

#### *Objector's Evidence*

During cross-examination of Ms. Buschjost, counsel for Objector offered into evidence a clarification letter addressed to Ms. Buschjost dated June 1, 2012. Counsel for Objector indicated that the letter was in response to the various Intervenors' concerns with Objector's objection and proposed work description for carpenters. In attempting to explain the purpose of the letter, counsel for Objector stated that the "letter is basically say[ing], 'we're not claiming your work' ... this is definitively saying 'we're not looking at everything you think we're looking at.'" Counsel for Objector later stated that the letter was essentially a "stipulation by the carpenters as to what they do or do not claim as to work."

The clarification letter is listed in its entirety below:

This letter is a response to the various Intervenors in the above styled matter. The purpose of this letter is to clarify the objectives sought by the Carpenters in their Appeal. Please circulate this letter to all Intervenors.

#### **INTERVENOR BRICKLAYER**

The Bricklayers' first objection is that the Carpenters may be claiming expansion joints and false joints in all types of masonry. **The Carpenters do not claim this work.**

The Bricklayers' second objection appears to be that the Carpenters claim the unloading of brick and stone masonry. **The Carpenters do not claim this work.**

The Bricklayers' third objection is that the Carpenters claim the unloading of precast panels. **The unloading and setting of precast stone and brick panels is 95% performed by Carpenters and Ironworkers in the State of Missouri. The Carpenters claim this work non-exclusively.**

The Bricklayers' fourth objection is that the Carpenters claim the installation of curtain wall systems. **The installation of curtain wall systems is 95% performed by Carpenters and Ironworkers in the State of Missouri. The Carpenters claim this work non-exclusively.**

#### **INTERVENOR LABORERS**

The Laborers' first objection is that the Carpenters claim the unloading of materials that Carpenters install. **Laborers unload common dimension lumber and drywall. All other materials that Carpenters install is unloaded by Carpenters and claimed by the Carpenters.**

The Laborers' second objection is that they do not understand the definition "finished item." **A finished item is anything installed by a Carpenter but does not include the unloading of common dimension lumber and drywall.**

#### **INTERVENOR IRONWORKERS**

The Ironworkers' first objection is that the Carpenters are claiming structural steel. **The Carpenters are not claiming structural steel except to the extent that it is alleged that structural steel is used in bleachers, curtain walls, prefabricated buildings, metal studs or metal trusses.**

The Ironworkers' second objection is that the Carpenters are claiming curtain wall systems, store front systems and skylight systems. **This work is performed by Carpenters, Ironworkers and Glaziers throughout the State of Missouri. The Carpenters are claiming this work non-exclusively.**

The Ironworkers' third objection is that the Carpenters claim unloading of materials that Carpenters install. **The Carpenters do not claim the unloading of structural steel as defined above in this subsection. The Carpenters do claim the work of unloading and setting machinery installed by Carpenter millwrights non-exclusively.**

The Ironworkers' fourth objection is that the Carpenters might claim the erection, installation and repair of structural, architectural and reinforcing iron and steel. **The Carpenters do not claim reinforcing iron and steel. The Carpenters do claim the installation of metal windows, doors, skylights, metal panels and other metal materials such as the lining of freezers, coolers or other rooms that require metal non-exclusively.**

The Ironworkers' fifth objection is that the Carpenters claim the installation of steel expansion joints. **The Carpenters do not claim the installation of steel expansion joints.**

The Ironworkers' sixth objection is that [sic] claim the installation of metal ladders, handrails, walkways, platforms and gangways. **The Carpenters claim the erection and installation of bleachers and anything associated with the bleachers. The Carpenters claim the work of installing metal ladders, handrails, walkways, platforms and gangways non-exclusively.**

The Ironworkers' seventh objection is that the Carpenters claim the unloading, moving, placing and installation of multiple items and systems including wood, metal, aluminum and vinyl and machinery. **The Carpenters claim the unloading of all items they install including those listed except dimensional lumber and drywall.**

The Ironworkers' eighth objection is that the Carpenters claim the unloading of structural steel and concrete reinforcing. **The Carpenters do not claim the unloading of structural steel as limited above. The Carpenters do not claim**

**the unloading of concrete reinforcing. The Carpenters do not claim the unloading of machinery and equipment non-exclusively. The Carpenters do claim the unloading of precast bridge girders, machinery and equipment non-exclusively.**

#### **INTERVENOR CEMENT MASON**

The Cement Masons' first objection is that the Carpenters are claiming "the molding of expansion joints and edges, using edging tools, jointers an[d] straightedge." **The Carpenters do not claim "the molding of expansion joints and edges, using edging tools, jointers an[d] straightedge."**

The Cement Masons' second objection is that the Carpenters claim the building of forms. **The Carpenters do claim the building of forms but the Carpenters do not claim the "setting of concrete curb, gutter and sidewalk forms one (1) board high up to twelve inches (12")."**

#### **INTERVENOR GLAZIER**

The Glaziers' first objection is that the Carpenters claim the installation of metal window and door frames into which glass panels are to be fitted or sliding windows, the bolting of metal hinges, handles, locks and other hardware to prefabricated glass doors. **The Carpenters claim the installation of metal window and door frames into which glass panels are to be fitted or sliding windows, the bolting of metal hinges, handles, locks and other hardware to prefabricated glass doors non-exclusively.**

The Glaziers' second objection is that the Carpenters claim the "installing of mirror or structural glass on building fronts, walls, ceilings or tables, using mastic, screws or decorative molding. **The Carpenters claim the "installing of mirror or structural glass on building fronts, walls, ceilings or tables, using mastic, screws or decorative molding non-exclusively.**

The Glaziers' third objection is that the Carpenters claim the installing of metal-framed glass enclosures for shower, bathtubs and skylights. **The Carpenters claim the installing of metal-framed glass enclosures for shower, bathtubs and skylights non-exclusively.**

#### **INTERVENOR PAINTERS**

The Painters' objection is that the Carpenters claim the building of all ladders and scaffolding. **The Carpenters claim the building of ladders more than fourteen feet six inches. The Carpenters do no [sic] claim the building or erection of scaffolding used exclusively by the Painters.**

### **INTERVENOR SHEET METAL WORKERS**

The Sheet Metal Workers' first objection is that the Carpenters are claiming "forming, rolling, drawing, stamping or pressing of sheet metal shingles, sheet metal tile, sheet metal brick, sheet metal stone and sheet metal lumber, when specified for use as roofing, siding, waterproofing, weather proofing, fire proofing or for ornamental or any other purpose; the "performing of sheet metal work specified for use in connection with or incidental to steeples, domes, minarets, look outs, dormers, louvers, ridges, copings, roofing, decking, hips, valleys, gutters, outlets, roof flanges, flashings, gravel stops, leader heads, down spouts, mansards, balustrades, skylights, cornice moulding, columns, capitals, panels, pilasters, mullions, spandrils and any and all other shapes, forms and design of sheet metal work specified for use for waterproofing, weatherproofing, fire proofing, ornamental, decorative or display purposes, or as trim on exterior of the buildings; and "The installing of sheet metal ceilings with cornices and mouldings of plain, ornamental, enameled, glazed or acoustic type [.]" **The Carpenters do not claim the "forming, rolling, drawing, stamping or pressing of sheet metal shingles, sheet metal tile, sheet metal brick, sheet metal stone and sheet metal lumber except to the extent that "sheet metal lumber" is meant to include metal studs in which case the Carpenters do claim such work.**

**The Carpenters do claim the installation of metal when specified for use as roofing, siding, waterproofing, weather proofing, fire proofing or for ornamental or any other purpose non-exclusively.**

**The Carpenters do (agreed to change at hrg) claim the "performing of sheet metal work specified for use in connection with or incidental to steeples, domes, minarets, look outs, dormers, louvers, ridges, or copings non-exclusively.**

**The Carpenters do claim the installation of roofing, decking, hips, valleys, gutters, outlets, roof flanges, flashings, gravel stops, leader heads, down spouts, mansards, balustrades, skylights, cornice moulding, columns, capitals, panels, pilasters, mullions, spandrils and any and all other shapes, forms and design of sheet metal work specified for use for waterproofing, weatherproofing, fire proofing, ornamental, decorative or display purposes, or as trim on exterior of the buildings non-exclusively.**

The Sheetmetal workers' second objection is that the Carpenters claim the application of wood or metal furring strips to which sheet metal is directly applied. **The Carpenters do claim the application of wood furring strips when Sheet metal workers are attaching sheet metal to such furring strips non-exclusively.**

### **INTERVENOR PLUMBER**

**The Carpenters cannot discern the Plumbers' objection unless it refers to caulking around tubs and other fixtures. The Carpenters do claim the caulking around tubs and other fixtures non-exclusively.**

I trust that this letter has clarified many of the concerns raised by the Intervenors.

Following the testimony of Ms. Buschjost, counsel for Objector called Donald J. Brussel, Director of Jurisdiction and Research for Carpenters' District Council of Greater St. Louis and Vicinity, to testify. During direct-examination of Mr. Brussel, counsel for Objector went through the clarification letter and questioned Mr. Brussel regarding the various work duties Objector is seeking to include and exclude as carpentry work. In some instances, Mr. Brussel provided additional information regarding the type of work Objector intended to include and exclude as carpentry work that was not included in Objector's proposed work description or in the clarification letter.

During cross-examination of Mr. Brussel, counsel for Intervenor, Iron Workers No. 10, asked Mr. Brussel how a contractor or the Division would be able to apply Objector's proposed occupational title work description when the language, on its face, is not clear as to what work is included exclusively or non-exclusively as carpentry work. Mr. Brussel deferred to counsel for a response to the question. Counsel for Objector stated that the clarification letter was intended as a proposed modification to Objector's originally filed objection.

Throughout the remainder of Mr. Brussel's testimony he was questioned extensively about the clarification letter. As a whole, Mr. Brussel acknowledged that in many instances the intent expressed in the clarification letter was not clear in the proposed Carpenter work description.

### **III. Findings of Fact**

Based on the evidence presented, the Commission makes the following findings of fact: The Occupational Titles of Work Descriptions Rule was promulgated to assist contractors and public bodies in determining what tasks fall under which title for purposes of determining the prevailing wage for a given task and to aid the Division in enforcing the Prevailing Wage Act. The various titles in the rule are based on what is determined to be work of a similar character. Overlap between the various occupational titles causes confusion and defeats the purpose of the rule.

The objection proposes to add a substantial amount of language to the occupational title of Carpenter, which, if sustained, would drastically expand the types of work classified as carpentry work. In an attempt to limit the application of the proposed language, Objector offered a clarification letter. The letter purports to explain exactly how broadly Objector intends the proposed language to apply. Specifically, the letter provides specific examples of different types of work and materials used in the completion of jobs that are, and are not, intended to be included within the proposed work description. Counsel for Objector stated at the hearing that the clarification letter was offered as a modification to the originally filed objection. However, Objector failed to explain how the extensive, and extremely pertinent, clarifications and

expressions of intent would be incorporated into Objector's proposed Carpenter work description.

Intervenors introduced as evidence, affidavits, collective bargaining agreements, and various other exhibits, which establish that the work duties claimed by Objector as Carpenter work duties are already included within the work descriptions of other occupational titles. Based upon Intervenors' evidence and the record as a whole, we find that if Objector's objection were sustained, it would create overlap among the work descriptions of several occupational titles.

#### **IV. Conclusions of Law**

The Objector bears the burden of proof in a prevailing wage proceeding, as set forth in 8 CSR 30-3.060(6):

The occupational titles and work descriptions for each type or class of work contained herein are valid throughout the entire state of Missouri. Through an objection to a wage order, an interested party may assert that any given description of work, as stated within this rule, does not apply to a specific occupational title(s) and that a different work description should apply to that occupational title(s). The interested party shall have the burden of proving by a preponderance of the evidence the inapplicability of the description of work within that particular occupational title, but shall be afforded the opportunity to do so in a hearing on an objection before the Labor and Industrial Relations Commission.

In this case, we find that Objector has failed to meet its burden of proving that the presumptively valid occupational title of Carpenter contained in 8 CSR 30-3.060(8)(D) is inapplicable and that Objector's proposed work description more accurately reflects the work performed by carpenters.

We find that Objector's proposed work description contains work tasks that are already included in other occupational titles. Objector has not proposed a deletion of the work tasks from other definitions. Consequently, if we were to sustain the objection, we would create overlap between the various occupational titles. The overlap would cause confusion and defeat the purpose of the rule.

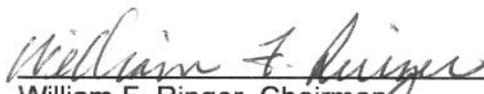
Objector proposes that the clarification letter be accepted as a modification to its originally filed objection, but failed to explain how this letter would be referenced or applied in the Occupational Titles of Work Descriptions Rule. While we agree that Objector's proposed work description is in need of clarification, the work descriptions must be clear as to what work is included, and not included, under each occupational title without a separate letter discussing the intent of the work description language. We find that Objector's June 1, 2012, clarification letter, standing alone, shows that Objector has not established by a preponderance of the evidence that the intended work descriptions are not applicable to the other duly promulgated occupational titles, which Intervenors support. For the foregoing reasons, the objection cannot be sustained.

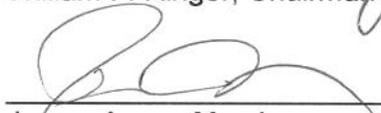
**V. Decision**

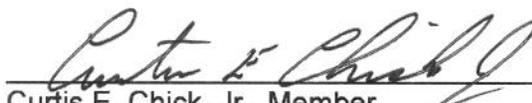
Objector has failed to meet its burden of proof to show that the work description for the occupational title of Carpenter should be amended to reflect the language provided in Objector's objection. Objector's objection is overruled

Given at the City of Jefferson, State of Missouri, this 21st day of June 2012.

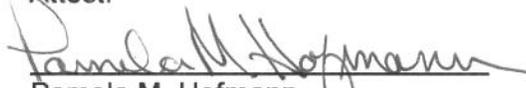
LABOR AND INDUSTRIAL RELATIONS COMMISSION

  
\_\_\_\_\_  
William F. Ringer, Chairman

  
\_\_\_\_\_  
James Avery, Member

  
\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

  
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Pamela M. Hofmann  
Secretary