**AMENDMENT TO IMPLEMENT SECURE ACT PROVISIONS FOR TERMINATING PLAN**

**ARTICLE 1**

**PREAMBLE**

1.1 **Adoption and effective date of Amendment**. The Employer hereby adopts this Amendment to the Plan identified below. Except as otherwise specified in this Amendment, this Amendment is effective ("the Effective Date") on the first day of the first Plan Year beginning after December 31, 2019, or as soon as administratively feasible thereafter.

1.2 **Superseding of inconsistent provisions**. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment. Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. Most Articles include definitions which are specific to that Article.

1.3 **Construction.** Except as otherwise provided in this Amendment, any "Section" reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section, or other numbering designations.

1.4 **Intention; Construction**. The purpose of this amendment is to amend the Plan in accordance with pension related provisions of the Further Consolidated Appropriations Act of 2019 (“FCAA”) in general, and Division O of that Act, the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE”), in specific. It also addresses a provision of the Bipartisan American Miners Act (“BAMA”), which is also part of FCAA. The provisions of this Amendment shall be interpreted and applied to be consistent with FCAA.

**ARTICLE 2**

**IDENTIFICATION; ELECTIONS**

2.1 **Identifying information.**

 A. Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 B. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 C. Type of Plan (*check one*)

 (1) [ ] 401(k) Plan

 (2) [ ] Profit-Sharing Plan (other than a 401(k) plan)

 (3) [ ] Money Purchase Pension Plan

 (4) [ ] Defined Benefit Plan (including a cash balance plan)

 (5) [ ] 403(b) Plan

 (6) [ ] 457(b) Plan (check one): [ ] Governmental employer [ ] Tax-exempt employer

2.2 **Plan Type Definitions.** “Qualified Plan” means a 401(k) Plan, Profit-Sharing Plan, Money Purchase Pension Plan or Defined Benefit Plan. “Defined Contribution Plan” means a Qualified Plan other than a Defined Benefit Plan.

2.3 **Default Provisions**. The following provisions apply except to the extent the Employer makes a different election in one or more of Sections 2.4 through 2.9.

1. **The Plan does not make birth/adoption distributions described in Article 5.**
2. **Distribution of RMDs will begin for Affected Participants no sooner than April 1 of the calendar year following the year the Participant attains age 72.**
3. **Participants will not be able to take in-service distributions from Money Purchase Pension Plans, Defined Benefit Plans, or Governmental 457(b) Plans at age 59½.**
4. **The Plan will not make distributions of Lifetime Income Investments as described in Article 9.**
5. **If the Plan is a QACA, the automatic deferral percentage will not exceed 10%.**
6. **The Plan (if a retirement income account plan described in Code §403(b)(9)) does not cover employees of organizations affiliated with the Employer (other than Participating Employers).**

**Skip Sections 2.4 through 2.9 if you accept the default provisions listed in Section 2.3. Any entry in Sections 2.4 through 2.9 will override the corresponding default.**

2.4 [ ] **Birth/Adoption Distributions**. The provisions of Article 5, dealing with distributions following birth or finalized adoption APPLY as follows: (*Check (a) or (b). Check (c) if applicable.*)

(a) [ ] The provisions apply effective January 1, 2020.

(b) [ ] The provisions apply effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (*Enter date after December 31, 2019.*)

(c) [ ] Distributions are not available from the following accounts: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e.g. matching contributions, or accounts in which the Participant is not fully vested).

2.5 [ ] **RMD Timing.** Distribution of RMDs to Affected Participants, as described in Article 6, will NOT be delayed on account of this Amendment (i.e., distributions will generally commence no later than April 1 of the calendar year following the year the Affected Participant attains age 70½), in accordance with Section 6.5.

2.6 [ ] **In-Service Distributions**. The provisions of Article 8, dealing with in-service distributions at age 59½ for pension plans and governmental 457(b) plans, APPLY as follows. If 2.6 is selected and 2.6(c) is not selected, in-service distributions are permitted at age 59½. (*Check (a) or (b). Check (c) if applicable.*)

(a) [ ] The provisions apply effective on the first day of the first Plan Year beginning after December 31, 2019.

(b) [ ] The provisions apply effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Enter date after the first day of the First Plan Year beginning after December 31, 2019.*)

(c) [ ] Age at which in-service distributions are permitted \_\_\_\_\_\_\_\_\_\_\_ (*Enter age greater than 59½.*)

2.7 [ ] **Distributions of Lifetime Income Investments**. The provisions of Article 9, dealing with distributions of Lifetime Income Investments, APPLY effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Enter date after the first day of the First Plan Year beginning after December 31, 2019*.)

2.8 [ ] **QACA Maximum Automatic Deferrals**. The provisions of Article 11, dealing with the maximum automatic deferral percentage for a QACA, APPLY effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Enter date after the first day of the First Plan Year beginning after December 31, 2019*.)

2.9 [ ] **Retirement Income Accounts**. The provisions of Article 13, dealing with retirement income account plans described in Code §403(b)(9), APPLY effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (*Enter effective date*.) For purposes of Section 13.2, the following individuals are Specified Individuals: (*Select any that apply.*)

(a) [ ] A duly ordained, commissioned, or licensed minister of the Employer in the exercise of his or her ministry.

(b) [ ] An employee of one or more of the following organizations, each of which is exempt from tax under Code §501 and is controlled by or associated (as described in Code §414(e)(3)(D)) with a church or a convention or association of churches: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(c) [ ] A former Employee described in Code §414(e)(3)(B)(iii).

(d) [ ] Describe: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (*Describe or name one or more individuals or categories of individuals who will be treated as an Employee. Each such individual must be described in Code §414(e)(3)(B)*.)

**ARTICLE 3**

**ADP SAFE HARBOR NONELECTIVE PLANS – SECURE §103**

3.1 **Application.** This Article 3 will apply only if the Plan is a 401(k) Plan. It is effective for Plan Years beginning after December 31, 2019.

3.2 **No need for safe harbor notice.** If the Employer makes a Safe Harbor Nonelective Contribution, then the Plan can use the ADP Safe Harbor, whether or not Participants receive a Safe Harbor Notice. However, the Plan is required to provide a Safe Harbor Notice if the plan utilizes the ACP safe harbor described in Code §401(m)(11) or (12).

3.3 **Retroactive adoption.** Unless the Plan at any time during the Plan Year is a Safe Harbor Match Plan, then the Employer may amend the Plan at any time within twelve months after the end of the Plan Year to provide (A) that the Employer will make a Safe Harbor Nonelective Contribution for the entire Plan Year, (B) that the Plan qualifies for the ADP Safe Harbor for the Plan Year, and (C) that the Plan will not be required to perform the ADP Test for the Plan Year. However, if the Employer adopts the amendment on or after the 30th day before the close of the Plan Year, the Safe Harbor Nonelective Contribution must be at least 4% of the Participant’s Compensation.

3.4 **Definitions.** The following terms have the meaning set forth in this paragraph as more fully provided in the plan terms pertaining to the related subject matter. A “**Safe Harbor Nonelective Contribution”** means a contribution described in Code §401(k)(12)(C) or Code §401(k)(13)(D)(i)(II) of at least 3% of Compensation. The ADP Test means the test provided in Code §401(k)(3)(ii). The “**ADP Safe Harbor”** means the safe harbor provided by Code §401(k)(12)(A) or a Qualified Automatic Contribution Arrangement (QACA) described in Code §401(k)(13). A “**Safe Harbor Match Plan”** is a Plan which provided during the Plan Year that Participants would receive a matching contribution described in Treas. Reg. §1.401(k)-3(c) or Treas. Reg. §1.401(k)-3(k)(2). A “**Safe Harbor Notice”** is a notice described in Code §401(k)(12)(D) or Code §401(k)(13)(E).

**ARTICLE 4**

**403(b) TERMINATION DISTRIBUTIONS – SECURE Act §110**

4.1 **Application.** This Article 4 will apply only if the Plan is a 403(b) Plan.

4.2 **Custodial Accounts.** In connection with distributions upon termination of the Plan, the Plan may treat the delivery of a custodial account as a distribution, pursuant to IRS guidance required under SECURE Act §110.

**ARTICLE 5**

**BIRTH/ADOPTION DISTRIBUTIONS – SECURE Act §113**

5.1 **Application.** This Article 5 will apply only if (1) the Plan is a Defined Contribution Plan, a 403(b) Plan, or a a Governmental 457(b) Plan, and (2) the Employer elects in Section 2.4 for this Article 5 to apply, effective on the date specified in Section 2.4.

5.2 **Distribution Authorized.** A Participant may request a distribution (other than from an account described in Section 2.4(c)) of up to $5,000 (per child or Eligible Adoptee) as a QBAD. This $5,000 limit shall be reduced by QBADs to the Participant made with respect to the same child or Eligible Adoptee by other plans maintained by the Employer or a related employer described in Code §414(b), (c), (m), or (o). However, if the Plan is a Money Purchase Pension Plan, and the Participant has not separated from service, the Participant may not take a QBAD prior to attaining the earlier of Normal Retirement Age or age 59½.

5.3 **Definitions.** A “**QBAD**” is Qualified Birth or Adoption Distribution described in Code §72(t)(2)(H)(iii). A QBAD must be made during the 1-year period beginning of the date on which a child of the Participant is born or on which the legal adoption of an Eligible Adoptee by the Participant is finalized. An “**Eligible Adoptee**” is an individual, other than a child of the Participant’s spouse, who has not attained age 18 or is physically or mentally incapable of self-support. A individual is considered physically or mentally incapable of self-support if that individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. This provision shall be applied in a manner consistent with Part D of IRS Notice 2020-68.

5.4 **Rollover.** A Participant who received one or more QBADs from this Plan may, if the Plan then permits the Participant to make rollover contributions, make one or more contributions in an aggregate amount not to exceed the amount of such QBADs. The Plan will treat such a contribution as a rollover contribution made by direct trustee-to-trustee transfer within 60 days of distribution.

5.5 **Reliance.** The Plan Administrator may rely on an individual’s reasonable representation that the individual is eligible to receive a QBAD unless the Plan Administrator has actual knowledge to the contrary.

5.6 **Status.** A QBAD is not an eligible rollover distribution for purpose of the obligation to permit a direct rollover under Code §401(a)(31), the notice requirement of Code §402(f), or the mandatory withholding rules of Code §3405(c)(1).

**ARTICLE 6**

**REQUIRED BEGINNING DATE – SECURE Act §114**

6.1 **Application.** This Article 6 will apply to all plans, regardless of type. It is effective with regard to RMDs required to be made after December 31, 2019.

6.2 **Delay of Required Beginning Date.** An Affected Participant’s RBD shall not be earlier than April 1 of the calendar year following the year the Affected Participant attains age 72. For purposes of determining an Affected Participant’s RBD, an Affected Participant will be treated as a more than 5% owner if he or she was a 5-percent owner (as defined in Code §416(i)(1)(B)) as to the Plan Year ending in the calendar year the Participant attains age 72.

6.3 **Spousal Distributions.** If an Affected Participant dies prior to the Participant’s RBD, and the Participant’s sole Designated Beneficiary is the Participant’s surviving spouse, then the RMDs to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later.

6.4 **Definitions.** A Participant is an “**Affected Participant**” if the Participant was born after June 30, 1949. An “**RMD**” is a Required Minimum Distribution as described in Code §401(a)(9). A Participant’s “**RBD**” is the Participant’s Required Beginning Date as described in Code §401(a)(9)(C).

6.5 **Optional Distribution Timing.** If the Employer elects in Section 2.5 for this Section 6.5 to apply, the timing and form of distributions to an Affected Participant will determined as though this Article 6 had not been adopted. Distributions pursuant to this paragraph, which are not RMDs, will be treated as eligible rollover distributions for purposes of the direct rollover provisions of Code §401(a)(31).

**ARTICLE 7**

**BENEFICIARY RMDS – SECURE Act §401**

7.1 **Application.** This Article 7 will apply to all plans other than Defined Benefit Plans. This Article will not apply to qualified annuities described in SECURE Act §401(b)(4)(B).

7.2 **Effective Date.** Except as provided in Section 7.4, Article 7 will apply to Participants who die on or after the Effective Date of this Article. Generally, the Effective Date of this Article is January 1, 2020. In the case of a governmental plan (as defined in Code §414(d)), the Effective Date of this Article is January 1, 2022. The Effective Date of this Article 7 in the case of a collectively-bargained plan will be the date determined in SECURE Act §401(b)(2).

7.3 **10-Year Rule.** If the distributee of a deceased Participant’s account is a Designated Beneficiary who is not an “Eligible Designated Beneficiary,” then the Plan will distribute the account in full no later than December 31 of the 10th year following the year of the Participant’s death.

7.4 **Beneficiary Death.** If an Eligible Designated Beneficiary dies before receiving distribution of the Beneficiary’s entire interest in the Participant’s account, the Plan will distribute that interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary’s death. Similarly, if a Participant died before the Effective Date of this Article 7, the limitations of this Article 7 shall apply to distributions to the beneficiary of the Participant’s Designated Beneficiary if the Designated Beneficiary died after the Effective Date of this Article 7.

7.5 **Definitions.** A distributee is a “**Designated Beneficiary**” if the individual is described under Treas. Reg. §1.401(a)(9)-4.An individual is an “**Eligible Designated Beneficiary**” of a Participant if the individual qualifies as a Designated Beneficiary and is (1) the Participant’s spouse, (2) the Participant’s child who has not reached the age of majority (as defined for purposes of Code §401(a)(9)(F), (3) an individual not more than 10 years younger than the Participant, (4) a disabled individual, as defined in Code §72(m)(7), or (5) an individual who has been certified to be chronically ill (as defined in Code §7702B(c)(2)) for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Code §401(a)(9)(H)(iv) and (v). When a child of the Participant reaches the age of Majority, the Plan will distribute the child’s account in full no later than 10 years after that date.

**ARTICLE 8**

**IN-SERVICE PENSION DISTRIBUTIONS – BAMA §104**

8.1 **Application.** This Article 8 will apply only if (1) the Plan is a Money Purchase Pension Plan, a Defined Benefit Plan, or a Governmental 457(b) Plan, or, as described in 8.3 a 401(k) or Profit Sharing Plan, and (2) the Employer elects in Section 2.6 for this Article 8 to apply, effective on the date specified in Section 2.6.

8.2 **Distribution at 59½.** A Participant can take an in-service distribution at age 59½, or, if later, the age (if any) specified in Section 2.6(c). Such a distribution will be limited to the vested portion of Participant’s accrued benefit or account and will be subject to all Plan provisions related to in-service distributions. If the Plan is a Governmental 457(b) Plan, the Plan can operationally permit distributions as early as January 1 of the calendar year the Participant attains 59½ (or such later age).

8.3 **Limited application to profit sharing plans.** If the Employer elects in Section 2.6 for this Article 8 to apply, this Article 8 will apply to an account in a 401(k) Plan or a Profit Sharing Plan which holds assets transferred from a Money Purchase Pension Plan or a Defined Benefit Plan.

**ARTICLE 9**

**DISTRIBUTIONS OF LIFETIME INCOME INVESTMENTS – SECURE §109**

9.1 **Application.** This Article 9 will apply only if (1) the Plan is a Defined Contribution Plan, a 403(b) Plan, or a Governmental 457(b) Plan, and (2) the Employer elects in Section 2.7 for this Article 9 to apply, effective on the date specified in Section 2.7.

9.2 **Distributions authorized.** A Participant may request, and as soon as practical after the request the Plan will make, a distribution of a Lifetime Income Investment on or after the date that is 90 days prior to the date on which the Lifetime Income Investment is no longer authorized to be held as an investment option under the Plan. Such distribution will be in the form of a Qualified Distribution, or, if the Employer elects in Section 2.7(c), in the form of a Qualified Plan Distribution Annuity Contract.

9.3 **Definitions.** The terms “**Lifetime Income Investment**,” “**Qualified Distribution**” and “**Qualified Plan Distribution Annuity Contract**” have the meanings defined in Code §401(a)(38)(B).

**ARTICLE 10**

**ADOPTION OF PLAN AFTER YEAR END – SECURE §201**

10.1 **Application.** This Article 10 will apply only if the Plan is a Qualified Plan. It is effective for Plan Years beginning after December 31, 2019.

10.2 **Retroactive Plan Adoption.** If the Employer adopted the underlying Plan to which this Amendment relates after the close of a taxable year, but prior to the due date (including extensions) of the Employer’s federal income tax return for that taxable year, the Plan is treated as having been adopted as of the last day of the taxable year if the Plan’s initial effective date is any date within that taxable year. However, no Participant may make elective deferrals to the Plan prior to the date it was adopted.

**ARTICLE 11**

**QACA MAXIMUM AUTOMATIC DEFERRAL – SECURE §102**

11.1 **Application.** This Article 11 will apply only if (1) the Plan is a 401(k) Plan or a 403(b) Plan and (2) the Employer elects in Section 2.8 for this Article 11 to apply, effective on the date specified in Section 2.8.

11.2 **Higher Maximum Contribution.** If the Plan includes a Qualified Automatic Contribution Arrangement (QACA) described in Code §401(k)(13), then the automatic deferral percentage which applies to a Participant (referred to as the “qualified percentage” in Treas. Reg. §1.401(k)-12(j)(2)) shall not exceed 10% of the Participant’s Compensation during the Initial Period, and shall not exceed 15% of the Participant’s Compensation after the Initial Period. The Initial Period for a Participant begins when the Participant first has contributions made pursuant to a default election under the QACA for a Plan Year and ends on the last day of the following Plan Year.

11.3 **Validation.** If the Employer amends or has amended the plan (effective for a Plan Year beginning on or after the effective date specified in Section 2.8) to provide for an automatic deferral percentage which does not exceed the limitations of Section 11.2, the amendment is valid notwithstanding any limitations contained in any provision of the Plan which would limit the automatic deferral percentage to 10%.

**ARTICLE 12**

**DIFFICULTY OF CARE PAYMENTS – SECURE §116**

12.1 **Application.** This Article 12 will apply only if the Plan is a Defined Contribution Plan or a 403(b) Plan. It is effective for Plan Years beginning after December 31, 2015.

12.2 **Inclusion in 415 Compensation.** The amount of a Participant’s Compensation for purposes of determining the annual addition limit under Code §415(c)(1)(B) is increased by the amount of Difficulty of Care Payments the Employer makes to the Participant.

12.3 **Definition.** A Difficulty of Care Payment is a payment described in Code §131(c)(1) made in connection with qualified foster individuals.

**ARTICLE 13**

**EMPLOYEES PARTICIPATING IN RETIREMENT INCOME ACCOUNT PLAN – SECURE §111**

13.1 **Application.** This Article 13 will apply only if (1) the Plan is a 403(b) Plan, (2) Plan assets are held in retirement income accounts described in Code §403(b)(9), and (3) the Employer elects in Section 2.9 for this Article 13 to apply. It is effective as of the date specified in Section 2.9.

13.2 **Employee.** For all Plan purposes, the term “Employee” includes Specified Individuals as elected in Section 2.9.

This Amendment has been executed this \_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_.

Name of Employer:

By: