**AMENDMENT TO PROVIDE FOR POOLED EMPLOYER PLAN**

**ARTICLE 1. PREAMBLE**

1.1 **Adoption**. The Employer hereby adopts this Amendment to the Plan identified below. It is effective on the Effective Date identified in Section 2.1(D).

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 shall have the same meaning in this Amendment.

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 **Effect of restatement of Plan.** If the Employer restates the Plan then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).

**ARTICLE 2. IDENTIFICATION**

2.1 **Identifying information.**

1. Name of Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Pooled Plan Provider *(Article 4)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Trustee *(Section 3.2)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Effective Date *(may not be earlier than the first day of the first plan year beginning after December 31, 2020)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. Additional Named Fiduciary *(Optional; Section 4.2)*:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ARTICLE 3. POOLED EMPLOYER PLAN**

3.1 **Pooled employer plan.** This plan is a pooled employer plan described in ERISA §3(43). It is a multiple employer plan, as described in Code §413(c) and it is not a multiemployer plan described in ERISA §3(37). It is a defined contribution plan. One or more of the Participating Employers does not have a common interest with one or more of the other Participating Employers, other than having adopted the Plan. If the Plan was in existence prior to December 20, 2019, then by its signature to this Amendment the Pooled Plan Provider (who is also the Plan Administrator) elects that the Plan will be treated as a pooled employer plan. For purposes of this Amendment, a “Participating Employer” is an Employer who executes a Participation Agreement to the Plan or whose Employees are otherwise participating in the Plan.

3.2 **Trustee.** Section 2.1(C) names the Trustee at the time of the adoption of this Amendment. At all times, the Trustee must be a bank, or another financial institution qualified to act as an IRA trustee under Code §408(a). No Participating Employer can be a Trustee. The Trustee shall otherwise be subject to all provisions of the Trust related to the appointment, resignation, removal, replacement, and powers of Trustees. The Trustee is responsible for collecting contributions to, and holding the assets of, the Plan. The Trustee shall implement written contribution collection procedures that are reasonable, diligent, and systematic.

3.3 **Employer fiduciary responsibility** Each Participating Employer retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA §404(a), of the Pooled Plan Provider and any other Named Fiduciary of the Plan. Subject to ERISA §404(c), each Participating Employer retains fiduciary responsibility for the investment and management of the portion of the Plan’s assets attributable to the Employees of that Participating Employer (or their Beneficiaries or alternate payees), unless the Pooled Plan Provider has delegated that responsibility to another fiduciary. Except with regard to the administrative duties described in Section 4.3, each Participating Employer shall be treated as the plan sponsor with respect to the portion of the Plan attributable to Employees of such Employer (or their Beneficiaries).

3.4 **Employer operational responsibility.** Each Participating Employer agrees to take such actions that the DOL, IRS, or Pooled Plan Provider reasonably determines are necessary to administer the Plan and comply with ERISA and the Qualification Requirements. Each Participating Employer agrees to provide disclosures or other information the DOL, the IRS, or the Pooled Plan Provider otherwise determines are necessary to administer the Plan and to comply with the Qualification Requirements. The Pooled Plan Provider may provide such deadlines as it may reasonably determine for a Participating Employer to provide this information or to take such actions. Each Participating Employer agrees to conform to those deadlines. For purposes of this Amendment, the “Qualification Requirements” are those provisions required by the Code or IRS guidance to maintain the status of the Plan as a qualified plan under Code §401(a).

3.5 **Remedies.** If the Pooled Plan Provider determines that a Participating Employer (the “Defaulting Employer”) has failed to perform its duties under Section 3.4, then the following shall take place:

1. **Notice.** The Pooled Plan Provider shall notify the Defaulting Employer of the failure and the potential termination of the Defaulting Employer’s involvement in the Plan, as described in Paragraph 3.5(B). The notice must describe the failure, the actions the Defaulting Employer must take to cure the failure, and the deadline to perform such actions. That deadline shall be not less than 30 days after giving the notice unless the Pooled Plan Provider determines that the interests of Plan Participants requires a shorter deadline. The Pooled Plan Provider shall have the authority, in its sole discretion, to extend the deadline.
2. **Termination.** Unless the Defaulting Employer cures the failure by the deadline specified, the Pooled Plan Provider shall terminate the involvement of the Defaulting Employer in the Plan. The Pooled Plan Provider shall transfer the accounts of each Affected Participant to an Individual Retirement Account or other eligible retirement plan, as described in Code §402(c)(8)(B), for the benefit of the Affected Participant. Alternatively, the Pooled Plan Provider may spin off the accounts of the Affected Participants to a plan maintained only by the Defaulting Employer or a successor. The Defaulting Employer shall be solely responsible for any liabilities resulting from the failure. The “Affected Participants” are the Employees of the Defaulting Employer and their Beneficiaries.
3. **Compliance.** The Pooled Plan Provider, in acting under this Section 3.5, shall comply with any regulations or other guidance issued by the IRS pursuant to Code §413(e).

3.6 **No unreasonable fees.** Participating Employers, Participants and Beneficiaries are not subject to

 unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or

 otherwise transferring assets of the plan in accordance with Code §414(l), ERISA §208, or Section 3.5 of this Amendment.

**ARTICLE 4. POOLED PLAN PROVIDER**

4.1 **Pooled Plan Provider.** The Pooled Plan Provider of the Plan is the person or organization named in Section 2.1(B).

4.2 **Named Fiduciary.** The Pooled Plan Provider is a Named Fiduciary of the Plan, as defined in ERISA §402(a). The Pooled Plan Provider is the sole Named Fiduciary unless Section 2.1(E) designates one or more additional persons or organizations to serve with the Pooled Plan Provider as Named Fiduciary. By its signature to this Amendment, the Pooled Plan Provider acknowledges that it is a Named Fiduciary with regard to the Plan.

4.3 **Plan Administrator; related duties.** The Pooled Plan Provider is the Plan Administrator. The Pooled Plan Provider is responsible for the performance of all administrative duties (including conducting proper testing with respect to the Plan and the Employees of each Participating Employer) which are reasonably necessary to ensure the Plan satisfies all Qualification Requirements and that each Participating Employer complies with the requirements of Section 3.4. The Pooled Plan Provider shall ensure that all persons who handle assets of, or who are fiduciaries of, the Plan are bonded in accordance with ERISA §412. By its signature to this Amendment, the Pooled Plan Provider acknowledges that it is the Plan Administrator of the Plan.

4.4 **Disclosures.** The Pooled Plan Provider shall provide to the Participating Employers any disclosures or other information the DOL may require, including any disclosures and other information to facilitate performance of the fiduciary duties of the Participating Employers under Section 3.3.

4.5 **Registration.** The Pooled Plan Provider has previously registered as a pooled plan provider with the DOL and shall provide such additional or supplemental filings as required by law.

4.6 **Related entities.** The Pooled Plan Provider may delegate any of its duties hereunder to an organization which is related to the Pooled Plan Provider, as described in Code §414(b), (c), (m), or (o).

4.7 **Electronic communication.** Any disclosure or other information required to be provided under Sections 3.4, 3.5, or 4.4 of this Amendment may be provided in electronic form and shall be designed to ensure only reasonable costs are imposed on the Pooled Plan Provider and Participating Employers.

This Amendment has been executed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_.

Name of Employer:

By:

Pooled Plan Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_