**AMENDMENT TO RETROACTIVELY ADOPT NONELECTIVE CONTRIBUTION SAFE HARBOR**

**ARTICLE 1. PREAMBLE**

1.1 **Adoption**. The Employer hereby adopts this Amendment to the Plan identified below.

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.

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.

**ARTICLE 2. IDENTIFICATION**

2.1 **Identifying information.**

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

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

**ARTICLE 3. SAFE HARBOR 401(k)**

3.1 **Plan Year.** This amendment applies and is limited to the following Plan Year (the “Plan Year”): *[Select (a) or (b)]*

(a) [ ] The \_\_\_\_\_\_\_ calendar Plan Year. *[Enter year 2020 or later]*

(b) [ ] The Plan Year beginning \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and ending \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *[Enter first and last days of Plan Year beginning after December 31, 2019.]*

3.2 **Adoption.** The Employer has signed this amendment: *[Select (a) or (b).]*

(a) [ ] At least 31 days before the last day of the Plan Year.

(b) [ ] Either during the last 30 days of the Plan Year or at any time in the following 12 months.

3.3 **Nonelective contribution.** The Employer will make a Safe Harbor Nonelective Contribution (“SHNEC”) of \_\_\_\_\_\_ % of a Participant’s Compensation for the entire Plan Year. *[If 3.2(b) was selected, this percentage must be at least 4%. Otherwise, this percentage must be at least 3%.]*

3.4 **Compensation.** For purposes of computing the SHNEC, a Participant’s Compensation will be equal to the Participant’s total Compensation for the Plan Year, as defined under the terms of the Plan, reduced by the following amounts: *[Optional. Select (a), (b), and/or (c) if applicable.]*

(a) [ ] **Elective Deferrals**. See Section 3.8(A).

(b) [ ] **Fringe Benefits as described in Treas. Reg. §** **Reg. §1.414(s)-1(c)(3).**

(c) [ ] **Pre-Participation Compensation.** See Section 3.8(C).

3.5 **Participants receiving contribution.** The SHNEC will be made for and allocated to each Participant other than: *[Optional. Select (a), (b), and/or (c) if applicable.]*

(a) [ ] **HCE** **Participants**.

(b) [ ] **Collective Bargaining (union) Employees**.

(c) [ ] **OEE Participants.** See Section 3.8(B).

3.6 **Provisions relating to SHNEC.** The SHNEC will be fully vested. The Employer will contribute the SHNEC no later than 12 months after the end of the Plan Year. If the Plan specifies the distribution options available to safe harbor nonelective contributions, such rules will apply to the SHNEC. Otherwise, the distribution options (if any) applicable to QNECs (qualified nonelective contributions) will apply. If the Plan does not specify the distribution options for safe harbor nonelective contributions or QNECs, then the distribution options relating to Elective Deferrals made to the Plan will apply.

3.7 **Safe harbor status.** The Plan will be a safe harbor 401(k) plan (as described in Code §412(k)(12)) for the Plan Year, just as though the Employer had elected to make the SHNEC and elected safe harbor status prior to the first day of the Plan Year. Neither the Employer nor the Plan Administrator is required to provide Participants with a safe harbor notice described in Code §401(k)(12)(D) for the Plan Year. Except as otherwise provided in this Amendment, the Plan is subject to the Plan provisions relating to the ADP safe harbor for the Plan Year. Except as provided in Section 3.8(B), the Plan is not required to satisfy the ADP test provided in Code §401(k)(3) for the Plan Year.

3.8 **Definitions.** The following definitions will apply for purposes of this Amendment.

1. “**Elective Deferrals**” means elective contributions that are made by the Employer on behalf of the Participants that are not includible in gross income under Code §§125, 402(e)(3), 402(h), or 403(b), and Roth elective deferrals described under Code §402A.
2. “**OEE Participants**” means Participants who, 6 months after the first day of the Plan Year (or, if earlier, prior to the last day of the Plan Year), were not credited with one Year of Service or had not attained age 21. Plan eligibility rules will determine whether and when a Participant is credited with one Year of Service. Selecting option 3.5(c) means that the Plan will not qualify for the Code §416(g)(4)(H) top heavy exemption otherwise available for plans which consist solely of safe harbor contributions. Deferrals for OEE Participants must pass the ADP test provided in Code §401(k)(3), pursuant to the provisions of the Plan as in effect prior to this Amendment.
3. “**Pre-Participation Compensation**” means Compensation paid prior to the date an Employee becomes a Participant in the Plan. If the Employer has selected Section 3.5(c) to exclude from the SHNEC OEE Participants, and a Participant is eligible to receive a SHNEC but was credited with one Year of Service or attained age 21 after the first day of the Plan Year, then Pre-Participation Compensation also includes Compensation paid prior to the date which is 6 months after the first day of the Plan Year.

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

Name of Employer:

By: