

**AGREEMENT**

**Between**

**SMITH'S FOOD & DRUG CENTERS, INC.**

**AND**

**UNITED FOOD AND COMMERCIAL WORKER'S UNION LOCAL NO. 1564**

**Chartered By**

**United Food and Commercial Workers International Union**

**SANTA FE CLERKS AGREEMENT**

**SM461 AND SM491**

**Effective: February 13, 2022 through June 14, 2025**

**DRAFT COPY- The previously signed Collective Bargaining Agreement and the parties signed Memorandum of Agreement will control in the event of discrepancy.**

## TABLE OF CONTENTS

<b><u>SECTION</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
1	RECOGNITION OF THE UNION .....	4
2	EMPLOYMENT PROCEDURES .....	5
3	CHECK-OFF .....	7
4	DISCHARGE AND DISCRIMINATION.....	7
5	CONTRACT ENFORCEMENT .....	9
6	RIGHTS OF MANAGEMENT .....	10
7	UNION AFFAIRS .....	10
8	WORKING HOURS AND OVERTIME .....	11
9	SENIORITY .....	15
10	VACATIONS .....	18
11	WAGE RATES AND CLASSIFICATIONS.....	20
12	GENERAL PROVISIONS .....	23
13	HOLIDAYS .....	24
14	NO STRIKE – NO LOCKOUT .....	26
15	GRIEVANCE AND ARBITRATION.....	26
16	HEALTH AND WELFARE.....	28
17	LEAVES OF ABSENCE.....	30
18	FUNERAL LEAVE.....	31
19	JURY DUTY .....	31
20	PENSION .....	32
21	TECHNOLOGICAL CHANGE .....	35
22	STORE CLOSING .....	36
23	WAIVER.....	36
24	SEPARABILITY .....	37
25	SAFETY AND HEALTH .....	37
26	MUTUAL RESPECT OF THE PARTIES.....	38
27	EEOC .....	38
28	TERM OF AGREEMENT.....	38
	APPENDIX "A".....	40
	EXHIBIT B.....	41
	BARGAINING NOTES.....	44

LETTER OF AGREEMENTS

FREIGHT AND DAIRY LEAD LETTER OF UNDERSTANDING.....45

LETTER OF UNDERSTANDING.....48

CLICK LIST (ecommerce).....49

MURRAY'S CHEESE.....50

LEAD CSM MOA.....52

LOU ON EMERGENCY PROVISIONS.....54

LOU ON NEW MEXICO'S HEALTHY WORKPLACES ACT.....56

**AGREEMENT  
Between**

**SMITH'S FOOD & DRUG CENTERS, INC.  
AND  
UNITED FOOD AND COMMERCIAL WORKER'S UNION LOCAL NO. 1564**

**Chartered By**

**United Food and Commercial Workers International Union**

**Effective: February 13, 2022 through June 14, 2025**

THIS AGREEMENT is entered into and is effective on this 13<sup>th</sup> day of February 2022, between Smith's Food & Drug Centers, Inc., referred to hereinafter as the "Employer" or the "Company" and the United Food and Commercial Workers Union Local No. 1564, chartered by the United Food and Commercial Workers International Union, referred to hereinafter as the "UNION."

It is the intent and purpose of the Employer and the Union to promote and improve labor-management relations between them and to set forth herein the basic terms of agreement covering wages, hours, and conditions of employment to be observed in the retail establishment.

In consideration of mutual promises and agreements between the parties hereto, and in consideration of their mutual desire in providing for the orderly settlement of disputes between them, the parties to this Agreement agree as follows:

**SECTION 1.**

**RECOGNITION OF THE UNION**

1.1 – Bargaining Unit. The Employer recognizes the Union as the exclusive Collective Bargaining Representative for all employees at the Employer's Retail Stores in the state of New Mexico in the following county:

Santa Fe County

and such other counties as may be added from time to time; excluding Store Director, Assistant Store Director(s), Non-food Manager, Grocery Manager, pharmacy employees, office and clerical employees, meat department employees, guards, supervisory employees as defined by the Labor-Management Relations Act.

In addition to stores historically covered by this Agreement, this Agreement shall cover all stores owned or operated by Smith's Food & Drug Centers, Inc. within a sixty-five miles radius of the City of Albuquerque. Seniority shall be the county. No existing conventional store may be converted into a warehouse store without prior negotiations with the union.

Bargaining Note: Employees of the bargaining unit assigned as Night Service Managers on October 15, 2010 shall be grandfathered, at the employee's option, into the bargaining unit as a Night Service Manager. The number of Assistant Store Directors assigned to a store shall be limited to three (3), (four (4) in a Marketplace Store), except an additional Assistant Store Director may be temporarily assigned to a store as part of a training program.

1.2 – Bargaining Unit Work. To prevent the erosion of Bargaining Unit work, driver salesmen, book salesmen, or sales representatives shall not perform bargaining unit work or services in the Employer's Retail Establishments in excess of the prevailing practice in the Industry in areas covered by this Agreement.

Note: It is further understood that the use of vendor (and/or subcontractor) assistance with regard to cosmetics items and outdoor selling, including floral front porch work, is permitted.

1.3 – Counter Agreement. The Employer agrees not to enter into a counter-agreement or contract with its employees subject to the jurisdiction of the Union, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement.

1.4 – The Employer agrees not to subcontract operations currently existing within the stores without first negotiating the effects of subcontracting with the union. The employer may implement such changes prior to completion of such negotiations, but shall not do so until at least 30 days from the date the Union was notified. Subcontracting is defined as a contractual relationship with another company whereby employees of that employer perform the work of bargaining unit employees.

## **SECTION 2.**

### **EMPLOYMENT PROCEDURES**

2.1 – Union Security. It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing, and those who are not members on the effective date of this Agreement shall, on the thirty-first (31st) day following the effective date of this Agreement become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date shall, on the thirty-first (31st) day following the beginning of such employment become and remain members in good standing in the Union. For the purpose of this Section, the execution date of this Agreement shall be considered as its effective date. Employees may satisfy their obligation under this Article to become or remain a member of the Union by tendering to the Union that portion of periodic dues and initiation fees universally required as a condition of acquiring or retaining full membership in the Union which is expended on activities which are necessary to performing the Union's duties as an exclusive bargaining representative.

- (a) Upon the failure of any employee to tender his initiation fee or dues to the Union within the period, and under the conditions specified above,

the Union shall notify the Employer and the employee in writing of such notice, and not more than seven (7) days thereafter, the Employer shall discharge such employee, unless the Union has notified the Employer that the employee has satisfied the requirements for good standing.

- (b) The Union agrees to hold the Employer harmless from any liability which may arise from the application of this Section at the request of the Union.

2.2 – Probationary Period. The first ninety (90) days of any new employee's tenure shall be considered as probationary. All terms of this Agreement shall apply during said probationary period; provided however, that such employees may be terminated during such period for any reason. Part-time employees must work ninety (90) days, with a minimum of one hundred eighty hours, to complete their probationary period. Probationary employees shall have no seniority rights, but upon successful completion of said probationary period, seniority rights shall date back to the initial date of employment.

2.3 – Notification of New Hires. The Employer agrees to notify the Union in writing within one (1) week, from the date of the employment of any employees, subject to this Agreement, of the name of such employee, address, social security number, date of birth, classification, store employed and date of employment. The Union shall furnish forms for the above section upon request from the Employer.

2.4 – Credit For Prior Experience. Previous, provable comparable work experience within the past five (5) years from the date of present employment shall be the basis for determination of an employee's rate of pay.

- (a) For credit to be given, the employee must indicate the experience at the time of employment on the application for employment furnished by the Employer and, if requested to do so, shall provide written verification satisfactory to the Employer.

Prospective employees may waive this subsection, in whole or in part, provided the waiver is reduced to writing prior to employment. A copy of this waiver will be provided to the Union, upon request.

- (b) Experience shall be credited retroactive for a maximum of sixty (60) days, upon receipt of such written verification. Comparable work experience shall be work of similar duties with a company of comparable or larger size. Work in convenience stores shall not be considered. Self-employment will not be credited.
- (c) Claims for a rate adjustment based on previous experience, in order to be eligible for retroactive payment, must be filed within forty (40) days from the date of employment. Claims filed after this period to a maximum of sixty (60) days shall be adjusted but not retroactively. Claims filed after sixty (60) days from date of employment shall be forfeited and waived and failure to provide information on the application blank will also waive any right of the employee to any future claim of experience credit for the experience so omitted.

### **SECTION 3.**

#### **CHECK-OFF**

3.1 – The Employer agrees that upon receipt of a "check-off Authorization Card" from the employees of the Employer who are members of the bargaining unit who have voluntarily authorized the employer to deduct union dues, fees and active ballot club deductions, the Employer shall deduct from the wages of such employees such amount certified by the Union as applicable to members in good standing. The "Check-off Authorization Card" shall comply with both State and Federal laws.

3.2 – All regular monthly dues and initiation fees deducted by the Employer shall be withheld each week and shall be remitted to the Union, if possible, no later than the twenty-fifth (25th) day of the calendar month in which such deductions are made. The Employer will deduct from the pay of employees in any month only the regular monthly Union dues and initiation fees becoming due and payable in such month.

3.3 – The Union agrees to indemnify and hold the Employer harmless from and against any and all demands, claims, damages, losses, liability or expenses, including without limiting the generality of the foregoing attorneys' fees, arising from or growing out of the application of this Section by the Employer.

### **SECTION 4.**

#### **DISCHARGE AND DISCRIMINATION**

4.1 – Non-Discrimination. The Employer shall not discriminate against an employee for upholding Union principles, for filing a grievance, enforcing the contract or for other legally protected activity, serving on a committee of the Union, or any organization affiliated therewith, and failing or refusing to purchase stocks, bonds, securities, or interest in any partnership, corporation and/or company, nor shall the upholding of such Union principles by said employee be a violation of the contract.

The Employer and the Union agree that each will fully comply with all applicable laws and regulations regarding discrimination against any employee or applicant for employment because of such person's race, religion, color, national origin, sex, sexual orientation, age or disability. Wherever the masculine gender is used, it shall be deemed to include the feminine gender as well.

4.2 – Discharge. The Employer shall have the right to discharge, suspend, or discipline any employee for just cause.

- (a) Any employee who is discharged, suspended, or disciplined shall be informed at the time of the discharge, suspension or discipline of the immediate cause of such action.
- (b) Upon request to a designated Employer representative, any employee who is discharged, suspended, or disciplined shall be informed, in writing of the cause of such action within forty-eight (48) hours of receipt of such request.
- (c) If an employee feels that he has been unjustly discharged, suspended, or disciplined, he shall have the right to appeal to the Arbitration and

Grievance procedure as provided for in Article 15 of this Agreement.

- (d) Suspension. Any employee who is suspended shall be informed of the length of the suspension at the time of the suspension. The Employer may suspend an employee indefinitely pending the completion of a reasonably prompt investigation, but in no event shall a suspension pending investigation be longer than two (2) weeks. Employees suspended pending an investigation will be paid their regularly scheduled hours and appropriate benefits if the Company or an arbitrator determine the suspension was unwarranted, and the employee returns to work.

4.3 – Warning Letters. In those instances where an employee's conduct although not warranting immediate suspension, demotion or discharge, is deemed to be unsatisfactory and if continued will result in suspension, demotion or discharge, an employee must be given a written warning notice of a similar offense prior to the imposition of suspension, demotion or discharge for the offense.

- (a) The warning notice will be personally delivered to the employee and the contents thereof explained at that time.
- (b) The notice shall specify the conduct objected to and the time limits, if any, for the employee to improve or correct the alleged deficiency or misconduct with a copy sent to the Union and a copy given to the employee. The employee so notified may be required to sign a receipt of the notice which will in no way be construed to be an admission of any misconduct or agreement with the contents of such notice. If any employee refuses to date and sign such notice, the employee shall be given an opportunity to contact the Local Union and to comply, and if they still fail to date and sign such notice, they may be suspended until such time as they do date and sign the notice.
- (c) This Section shall not be construed to require an Employer to issue a written warning notice in cases where discharge or suspension is imposed for just cause on the offense. No warning notice shall be valid unless given within fourteen (14) days after the event giving rise to such notice. Warnings both written and oral shall be effective for a period of nine (9) months unless another warning notice of a related or similar offense occurs within that year, in which event, the first (1st) warning remains in effect until nine (9) months after the second (2nd) notice.
- (d) If the employee does not agree with the notice, he shall have an opportunity to write an explanation and return it to the Employer with a copy to the Union within fifteen (15) days of the date that the notice is given to the Employee.

4.4 – Termination Payment. An employee who quits or is terminated for any reason shall be paid promptly all monies due.

4.5 – Notwithstanding the above, with regard to chronic tardiness or absenteeism, the following disciplinary action shall be taken:

- (a) First unexcused absence or tardiness.....verbal warning;
- (b) Second unexcused absence or tardiness..... first written warning notice;



- (c) Third unexcused absence or tardiness..... second written warning and three day suspension;
- (d) Fourth unexcused absence or tardiness ..... subject to discharge.

Absences or tardiness due to illness or injury shall not be considered unexcused, provided the Employee provides a doctor's certificate in accordance with Section 12.6. Notwithstanding the foregoing, the Employer reserves the right to apply the progressive discipline of this Section 4.5 in any case where it suspects an abuse.

4.6 – Department Head Demotion. Prior to any demotion related to performance, Department Heads shall be given an opportunity to correct such problems, provided however this does not limit the Employer's right to select or replace any Department Head.

## **SECTION 5.**

### **CONTRACT ENFORCEMENT**

5.1 – Contract Enforcement. Each of the parties hereto warrants that it is under no disability of any kind that will prevent it from completely carrying out and performing each and all of the provisions of this Agreement, and further, that it will not take any action of any kind that will prevent or impede it in the complete performance of each and every provision thereof.

5.2 – Working Rules. The Union recognizes the right of the Employer to establish reasonable work rules connected with the work of the Employer, provided that such rules are not in conflict with the terms and provisions of this Agreement and further provided that no such rules shall become effective without notification to the Union. Application of such rules shall be made equally to all members of the bargaining unit. The Employer may enforce compliance with such rules by appropriate disciplinary action up to and including discharge.

5.3 – Free Time. It is intended there shall be no "free" or "time-off-the-clock" work practices under this Agreement. Any employee found by the Employer or by the Union to be engaging in such unauthorized practice shall be subject to discipline which may include termination.

5.4 – Payroll Records. An authorized Union representative shall have the privilege of examining the Employer's payroll, including computerized time system, involving employees covered by this Agreement upon request at reasonable and mutually agreeable times.

5.5 – Register Shortages. No employee shall be held responsible for register shortages, unless adequate procedures have been established by the Employer, through which the employee is allowed to check monies in and out of his assigned register at the beginning and end of each period of work with said register; and provided further, that the employee shall have sole access to his assigned register in the interim nor shall bookkeepers be held accountable for financial transactions, including safe overages and shortages, of the store unless adequate bookkeeping procedures have been established by the Employer.

5.6 – Bad Checks. No employees shall be required to make financial restitution for bad checks, other than for their own. Employees, however, shall be subject to disciplinary

action, up to and including discharge, for accepting checks in violation of posted Company rules or policies.

5.7 – Polygraph. An employee shall not be required to take a polygraph examination or any other electronic tests as a condition of continued employment.

5.8 – Employee Records. Employees covered by this Agreement shall have the privilege of examining their personnel records upon request.

## **SECTION 6.**

### **RIGHTS OF MANAGEMENT**

6.1 – The management of the Company and the directions of the working force, including the right to plan, direct, and control retail operations, to hire, lay-off or relieve employees from duties, to maintain the discipline and efficiency of the employees and to require employees to observe Company rules and regulations, demote or discharge employees for cause, are to be the sole right of, and function of the Employer.

6.2 – The parties agree that the foregoing enumeration of management's rights shall not be deemed to exclude other functions not specifically set forth. The Employer therefore, retaining all rights not otherwise specifically covered in this Agreement.

6.3 – The exercise of the foregoing rights shall not alter any of the specific provisions of this Agreement, nor shall they be used to discriminate against any member of the Union.

## **SECTION 7.**

### **UNION AFFAIRS**

7.1 – Union Store Card. The Union agrees to issue a Union Store Card and/or window decals to the Employer under the rules governing Union Store Cards set forth in the Constitution of the United Food and Commercial Workers International Union. Such Union Store Card and decals are and shall remain the property of said International Union, and the Employer agrees to surrender said Union Store Card to an authorized representative of the Union on demand in the event of failure by the Employer to observe the terms of this Agreement or the conditions under which said Union Store Card and/or decals are issued. The Employer may display such Union Store Cards and/or decals in conspicuous areas accessible to the public, in each establishment covered by this Agreement.

7.2 – Store Visitation. After notifying the manager or person in charge of the store, authorized representatives of the Union shall be permitted to visit the store regarding Union matters during working hours; such visits shall not unreasonably interfere with the conduct of the Employer's business. Time taken for such an interview in excess of ten (10) minutes for each employee shall not be on Company time.

7.3 – Union Notices. The Employer shall provide space for posting Union Notices, and other forms called for or required by this Agreement.

7.4 – Union Leave. Employees shall be allowed time off without pay for the purpose of attending Agreement negotiations, arbitration, or for Union meetings and conventions. Such leave shall be granted to not more than one employee per store, not to exceed one (1) week; provided, notice for such leave is given in advance sufficient to provide adequate replacement for the employee to be on leave. Upon request, employees may, at the Employer's discretion, be granted union leaves without pay for up to six months. The Union agrees to provide the Company with two weeks' notice when a union leave is completed to allow the Employer to schedule an employee on extended leave. Extensions may be granted up to an additional six months.

7.5 – Union Buttons. The Union Member will have the right to wear their Union Buttons.

7.6 – Union Representation. An employee covered by the terms of this agreement may request a representative of the Union be present during any investigatory interview by management which could result in the employee's discharge or suspension. Upon such request, the employer agrees to immediately cease any further questioning. The Union agrees to make a representative available within a reasonable time during the same day such request is made, unless making a representative available during the same day is impracticable because of the distance between the employer location and the nearest union business office or because the investigatory interview is commenced on a Saturday or Sunday. In the event of either of the foregoing exceptions, the Union shall make a representative available no more than thirty-six (36) hours after such request is made.

7.7 – Shop Steward. It is understood that the Union shall have the authority to designate and/or remove from among the seniority employees in the Bargaining Unit a Shop Steward. There shall be two Shop Stewards in each retail store covered by this Agreement.

- (a) The Shop Steward(s) shall be allowed to investigate grievances, provided such investigation is not conducted on Company time and such investigation is conducted without disturbing the Company's operation.
- (b) The Company shall have the right to call a conference with the Shop Stewards or Union official for the purpose of discussing complaints raised by the Company and time spent on such meetings by the Shop Stewards shall be paid for as time worked.

## **SECTION 8.**

### **WORKING HOURS AND OVERTIME**

8.1 – Work Week. The work week shall be Sunday through Saturday. For full-time employees, eight (8) hours shall constitute a day's work and forty (40) hours, consisting of any five (5), eight (8) hour days out of seven (7) shall constitute a regular week's work. However, if agreeable between the employee, the Employer, and the Union, an employee may be scheduled four (4) ten (10) hour shifts, not necessarily consecutive, and when scheduled would receive time and one half (1½ x) for all hours worked in excess of ten and one-quarter (10.25) work hours per shift or forty (40) work hours per week. Overtime will be paid only after 8.25 hours have been worked in a day (or 10.25 hours for employees who

are scheduled according to the ten-hour shift alternative) or over forty (40) hours in a week.

8.2 – Work Day. The regular day's work for all employees shall be worked within nine (9) consecutive hours. Except for Emergencies (or informational items requiring no responses), employees will not be contacted by salaried Company management when they are off duty. In the case of emergencies not requiring a Call-in, employees will be compensated for the time they are required to work at the direction of such management.

8.3 – Lunch Period. All employees shall receive one (1) uninterrupted hour off for lunch at approximately the middle of the working shift. No employee shall be required to take his or her meal before the end of the third (3rd) hour, nor later than the end of the fifth (5th) hour of the employee's scheduled work day. Part-time employees who are scheduled to work six (6) hours, but less than eight (8) hours in one (1) day shall be granted a thirty (30) minute meal period unless mutually agreed between the Employer and the employee otherwise. By mutual agreement between the Employer and the employee, an employee may work an eight (8) hour shift without taking a lunch period.

8.4 – Split Shift. A broken or split shift shall be defined as any period of time where not less than nine (9) hours have elapsed from the termination of an employee's previous shift. There shall be no split shifts except in cases where the employee is a school student and the student, the Union and the Employer agree hereto. In the event a violation of this provision occurs, the employee shall be paid for all time worked during the split at time-and-one-half.

8.5 – Overtime. There shall be no pyramiding of overtime and/or premium pay except that hours worked on Sunday shall be included as hours worked for the purpose of computing weekly overtime. Overtime or premium pay shall be defined as any pay in excess of the basic straight-time hourly rate. Hours paid for but not worked shall not be counted in computing weekly overtime. Employees will not be required to take time off in lieu of overtime hours worked.

8.6 – Work Schedule. It is agreed the Employer shall post a work schedule in a conspicuous place, in ink, in each store, on Thursday morning of each work week but not later than 12:00 noon, for the following week for all employees.

- (a) All employees listed on the schedule will be provided the work or pay for the hours posted; provided they report to work as scheduled.
- (b) Each schedule shall show the first and last name of each employee, starting time, meal period, quitting time and days off, and in the order of seniority - provided the Employer's scheduling system can accommodate such ordering. The parties agree that the use of electronic scheduling will not interfere with or reduce hours employees are entitled to under the CBA. Where any work schedule is modified, the Company shall repost a paper version of the modified schedule in the appropriate store by 8 a.m. the next day.
- (c) Once the work schedule is posted, both the Employer and the employees covered by this Agreement agree that, if it becomes necessary to change the work schedule for reasons beyond the control of either, as much advance notice as is possible shall be given. Both

parties agree to personally notify the other of the inability to work the schedule. Employees must notify the store manager or person in charge of this inability.

- (d) If the work schedule is not posted in accordance with the terms of this Agreement, on the first violation, the Personnel Director shall be notified. If there is a second violation of this provision, the Personnel Director shall be notified. If there are any further occurrences of a violation of this provision, each employee listed on the work schedule for the department of the violation shall be paid one hour of penalty pay. Should there be no violations for one year, the process shall begin again.
- (e) Any employee who fails to report for work on a scheduled work day must provide the Store Manager or manager-in-charge with sufficient reason to have prevented the employee from reporting to work or they may be considered a no call/ no show and suspended for five days and shall be given a written corrective action notice. An employee will be considered to be a no call/no show if they fail to call the manager-in-charge at the store or show up to work prior to the end of their scheduled shift. If the employee repeats the infraction within two years, the employee may be terminated. If an employee fails to call to notify management that he or she is going to be late or fails to report to work within one hour following their scheduled starting time, the employee will forfeit the shift and the Company may then call in another employee.
- (f) It is understood that circumstances may require the management to change or alter schedules during the work week in case of emergency (emergency shall be defined as fire, strike, flood, illness, funeral leave, or act of God). In case of emergency as defined, the Employer shall notify affected employees of schedule changes immediately. In such cases, the Employer shall use its best efforts to assure a full-time employee of his or her forty (40) hours pay, provided he or she works the altered schedule. Part-time employees will be assured a minimum of four (4) hours pay each day of an altered schedule, provided he or she works the altered schedule. Schedules for part-time and courtesy clerks shall not be altered to deliberately reduce the original posted hours of work.
- (g) Part time employees who are to be scheduled more than five (5) days in a workweek will be given notification of such schedule forty-eight (48) hours prior to the posting of the schedule. Such employee must indicate in writing within twenty-four (24) hours of such notification a request not to work in excess of five (5) days a week. This request will be honored and can only be revoked by a written request submitted by the employee one (1) week in advance of the posting of the next schedule.
- (h) All employees shall report for and be ready for work at their scheduled starting time. The term "ready for work" shall include appropriate or required dress, including name tag and all other uniform components complete and worn, personal items stored away from the work area in a secure area provided by the Company, and restroom visits completed

prior to signing in for their shift.

- (i) Any employee who needs a specific day or days off for personal business will make the store manager aware of the need at least seventy-two (72) hours prior to the posting of the next week's schedule. Every reasonable effort will be made to grant such requests with no loss of hours or otherwise changing the schedule. When two (2) or more employees request the same specific days off, seniority shall apply.
- (j) The parties agree the schedule will not be used for arbitrary, capricious or retaliatory scheduling of employees.

8.7 – Sunday Work. Employees who want to work on Sundays shall so indicate in the store's computerized schedule.

- (a) The Employer shall schedule work on Sunday from those employees that indicated their availability in the computerized scheduler in order of department and classification seniority in the departments and classifications where help is needed and further subject to their ability to perform the work. Employees who fail to work a Sunday which they are scheduled without good cause shall have availability changed to reflect that they are unavailable to work on Sundays and will forfeit any right to work on Sundays for a period of three months, unless such rights are earlier restored upon the consent of the store director.
- (b) If there are not sufficient employees of proper department and classification seniority who have the ability to perform the work who have indicated their availability in the computerized scheduler to work on Sunday, then the Employer shall assign such work by reverse seniority.

8.8 – Rest Periods. All employees shall receive an uninterrupted fifteen (15) minute rest break for each four (4) hours of work scheduled, to be performed in any work day. In the case of an employee entitled to two (2) rest breaks, one (1) break shall be granted as near the middle of the period prior to the meal break as possible and the other shall be granted as near the middle of the period following the lunch break as possible. In cases of Part-time employees working less than an eight (8) hour day, the rest period will be scheduled in the longer half of the shift if the shift is broken by a lunch period. Provided there is no lunch scheduled, employees working six (6) hours or more but less than (8) shall receive one twenty (20) minute rest period towards the middle of their shift (in lieu of the fifteen minute rest break described above).

8.9 – Hours Guarantee. Full-time employees who are called to work and report for work on their day of rest shall receive four (4) hours work or four (4) hours pay at their applicable hourly rate. Part-time employees who are scheduled to report for work and work shall receive four (4) hours work or four (4) hours pay at their straight-time hourly rate of pay.

8.10 – Store Meetings. Time spent in required store meetings called by the Employer, shall be considered as time worked and shall be paid for in accordance with the

provisions of this Agreement. Store meetings, when scheduled on the work schedule in accordance with Section 8.6 of this Agreement, shall not constitute a split shift violation or a call-in. No employee shall be disciplined for failing to attend a store meeting on an approved personal holiday, vacation or requested day off.

## **SECTION 9.**

### **SENIORITY**

9.1 – Definition. Seniority shall be defined as the length of continuous employment with the Employer in the bargaining unit within the county as described in Section 1 of this Agreement, and no employee shall suffer loss of seniority by reason of approved leave as defined in this Agreement. However, employees working in Bernalillo, Sandoval and Valencia Counties, who transfer from one bargaining unit to another shall, after working six (6) months in the other bargaining unit, bridge their seniority for the purposes of this Agreement. Employees hired on the same day shall have their seniority broken by using the first letter of their last name on the date they were hired in alphabetical order (starting with A). Effective January, 2019 upon contract ratification Service Deli and Wall Deli clerks will transfer their current Meat department seniority into the retail contract.

9.2 – Principle of Seniority. The Employer agrees that the principle of seniority shall prevail in the lay-off of employees, recall of employees, and reduction of hours of full-time employees in the bargaining unit within each county; provided the factors of skill and ability to perform the required tasks are relatively equal.

Transfers. Employees applying for a posted job opening within the bargaining unit shall be given preference by seniority, provided skill, ability, and availability are equal for any opening that occurs.

9.3 – Application of Seniority. In the application of seniority for lay-off of employees, and reduction of hours of full-time employees:

- (a) The last employee hired in the bargaining unit in each county shall be the first employee laid off or reduced in hours by classification and department as the case may be. It is agreed that lay-offs shall occur only at the end of an employee's weekly schedule. Laid-off employee agrees to advise the Store Manager of any change of address or an out-of-town trip.

If an employee is scheduled for twelve hours or less, the employee may elect to be laid-off, and then shall be allowed to exercise the employee's seniority under the lay-off provisions herein.

- (b) The last employee laid off in each county shall be the first employee recalled to the department and classification. Notice of recall after lay-off shall be sent by certified mail to the employee's last known address with a copy to the Union. If persons so recalled do not report within one week after receipt of the above notice, they shall lose their seniority and right to further recall.
- (c) Any full-time employee that is reduced to part-time hours shall be offered the first available full-time job in the same classification and

department for which the employee has current skill and ability of performing that opens in the store in which the employee is then employed.

9.4 – Loss of Seniority. Employees shall lose seniority for the following reasons:

- (a) Termination for just cause;
- (b) Resignation;
- (c) Lay-off beyond three hundred sixty-five (365) consecutive days;
- (d) Transfer out of the bargaining unit for more than sixty (60) days;
- (e) Promotion out of the Bargaining Unit to a management position unless they return within one hundred eighty (180) days, then they shall suffer no loss of seniority;
- (f) Fails to return to work upon completion of an approved Leave of Absence; or
- (g) Fails to report to work following recall after lay-off.

9.5 – Any employee who desires assignment to a classification with a higher rate of pay covered by this Agreement, shall indicate such desire by advising the personnel manager in writing. The Employer shall make employees aware of promotional opportunities. Any promotion that is given without following this procedure shall be rescinded and this procedure shall then be followed. Such employee shall then be given preference by seniority for any opening that occurs, provided skill, ability and availability are equal for any opening that occurs. For Courtesy Clerks promoted in accordance with this provision, Health and Welfare Benefits and Dental Care Benefits shall become effective on the 1<sup>st</sup> of the month immediately following promotion, provided the employee qualifies as provided in Section 16.

Any employee, including courtesy clerks, who is promoted to a higher paying classification shall be slotted into the rate equal to or up to twenty cents higher than the rate they left. An employee may be held for up to one year following the promotion to allow their work experience to catch the employee, then they shall then be adjusted to the next higher wage progression and shall progress thereafter in accordance with the collective bargaining agreement.

Employees who desire promotion to head clerk (key carrier) shall advise the Personnel Director in writing. When there are openings for head clerk positions, the Employer will give those employees who have made their desire known preference in order of seniority. Employees who are determined not to be qualified must be advised of the reasons they are not qualified, in writing upon request, before the Employer may consider another person.

The Employer agrees to notify the Union in writing, on forms supplied by the Union, within fifteen days after promotion of the employee's name, date of promotion and rate of pay.



9.6 – Hours Maximizing. It is the desire of the Employer and the Union to provide full time employment in the Retail Food Industry for as many employees as is practical within the range of sound employment practices, recognizing the fluctuating nature of the Employer's business, including the need to provide enough part time people to meet the Employer's coverage requirements.

- (a) Full time employees are defined as those employees who work five (5), eight (8) hour days, forty (40) hours per week.
- (b) Part time employees are defined as those employees who work less than forty (40) hours per week.
- (c) Scheduling of employees shall be by seniority within the store, classification and department, subject to skill and ability being relatively equal. In accordance with the above, the Employer shall maximize daily and weekly schedules, in order of seniority, up to eight (8) hours per day and forty (40) hours per week, based upon the available hours as determined weekly by management.
- (d) When business fluctuations occur, those employees who have been defined as full time in accordance with paragraph (a) above, may be reduced in order of seniority within the bargaining unit, to schedules below forty (40) hours provided paragraph (c) is adhered to.

9.7 – Call-In Roster. If it becomes necessary to call in employees for work, the Employer shall first offer such work to employees in order of seniority who have signed a quarterly "call-in" list.

- (a) The quarterly call-in list will be conspicuously posted in each store one (1) week prior to the beginning of each quarter.
- (b) If no employee signs the call-in list or none of the employees are available, the Employer shall call by inverse order of seniority those employees who have not signed such call-in list.
- (c) Call-ins shall be for a minimum of four (4) hours work or four (4) hours pay, in lieu thereof. No employee will be called in if such call-in would result in the payment of daily or weekly overtime.
- (d) Notification for call-in work must be made by a member of the bargaining unit or by a member of management.

9.8 – Request for Full-time. Part-time employees who desire assignment to full-time work shall notify the Employer and the Union in writing. Part-time employee's desire for full-time work shall be renewed every six (6) months.

9.9 – Selection of Vacation. The selection of vacations shall be by seniority on a store basis.

9.10 – Seniority Lists. The Employers agree to furnish the Union with a seniority list

of its employees each six (6) months upon written request from the Union.

## **SECTION 10.**

### **VACATIONS**

10.1 – Vacation Eligibility. All regular employees coming under the jurisdiction of this Agreement who have been employed for a period of:

- (a) One (1) year of continuous service, shall have earned a vacation period of one (1) uninterrupted calendar week;
- (b) Three (3) years of continuous service, shall have earned a vacation period of two (2) uninterrupted calendar weeks.
- (c) Seven (7) years of continuous service, shall have earned a vacation period of three (3) uninterrupted calendar weeks.
- (d) Fifteen (15) years of continuous service, shall have earned a vacation period of four (4) uninterrupted calendar weeks.
- (e) Twenty (20) years of continuous service, shall have earned a vacation period of five (5) uninterrupted calendar weeks.

Employees hired on or after June 1, 2005 shall receive one (1) week paid vacation after one (1) year of continuous service, two (2) weeks paid vacation after three (3) years of continuous service, three (3) weeks of vacation after seven (7) years of continuous service, and four (4) weeks of vacation after fifteen (15) years of service.

10.2 – Vacation time off in excess of two (2) consecutive weeks must be mutually agreed by the store manager and the employee.

10.3 – The Employer retains the right to determine the number and classification of employees who may be on vacation at any given time. Subject to such considerations, Employees may select their vacation schedule by seniority, provided the Employer is given no less than twenty-one (21) days advance notice in writing from the beginning date of such vacation. Employees shall be personally notified in writing of the employer's decision regarding their vacation request no less than fourteen (14) days prior the beginning date of such vacation. If the employee is not notified as required, such request shall be considered to be granted.

If a conflict arises between employees as to vacation preference, and the employees in question have complied with the above notice provision, seniority shall govern within the department, the classification and store. If a conflict arises between employees as to vacation preference, and one or more employees have not complied with the above notice provision, vacation shall be awarded on a first come, first serve basis as to those employees. Employees hired before October 10, 2014, shall continue to receive their vacation pay immediately following their anniversary date of employment; all other employees shall receive their vacation pay not earlier than the week prior to taking the scheduled time off. Effective for anniversary dates on or after April 1, 2018, all employees shall receive their vacation pay not earlier than the week prior to taking the scheduled time off. Vacation shall be used in the year for which it is earned or it shall be forfeited.

Bargaining Note (2022) Vacation forfeiture shall be temporarily suspended following ratification of this agreement through June 14, 2025. Between ratification and June 14, 2025 any unused vacation shall be paid out following the employee's next anniversary date.

The Employer retains the right to determine the number and classification of employees who may be on vacation at any given time, however, the Employer agrees that not less than 3% of the employees in each store within the bargaining unit may be scheduled on vacation for major holidays listed in Section 10 (vacations) – except for the week of Thanksgiving holiday and the 7 days before the Christmas holiday (vacations during such weeks are at the sole discretion of management). The parties agree that such holiday vacations should be rotated among employees to the extent possible and to affect that goal, no one individual may request a holiday week vacation more than once during the calendar year. The parties also agree that in order to alleviate the impact of vacation requests during such holiday weeks where a vacation request has been granted for the department in question for such week. The above percentage does not apply during weeks for which there are insufficient vacation requests that do not comply with this Section.

10.4 – Computing Vacation Pay. All employees shall receive vacation pay based upon the employee's average weekly earnings during the twelve-month period immediately preceding the vacation for each week of vacation the employee is entitled to. (Twelve month's earnings divided by the number of weeks actually worked.)

10.5 – Employees whose services are terminated and who have earned and are eligible for a vacation in accordance with the above provisions, shall receive pay for such vacation whether it be one, two, three, four or five weeks, depending upon his eligibility for such vacation.

10.6 – Pro-rata Vacation Pay. All regular employees who have completed one (1) year of continuous service and who terminate, shall be entitled to a pro-rata vacation pay.

- (a) To be eligible for pro-rata vacation pay, the above described employee must give one (1) week's notice of intent to terminate his/her employment or, in the case of discharge, pro-rata vacation will be paid in all cases except dishonesty in connection with his/her employment or place of work.
- (b) Pro-rata vacation pay shall be based upon full months of employment and neither the partial anniversary month of employment nor the partial month in which the termination occurs will be used in determining the fraction of vacation pay due the employee.
- (c) Employees who must enter military service shall receive a pro-rata of their vacation pay at the time they leave for active duty; and upon their reinstatement shall be eligible for a pro-rata vacation for the year which they are restated, based upon their original anniversary date of employment.

10.7 – If any of the holidays enumerated in Section 13 hereof falls during an employee's vacation, the employee shall receive an extra day's vacation pay because of it.

## SECTION 11.

### WAGE RATES AND CLASSIFICATIONS

11.1 – Appendix "A" sets forth the job classifications, minimum rates of pay, effective dates and other provisions and is incorporated herein as if set forth in full.

11.2 – Premiums. The following premiums shall apply:

- a. Sunday Premium. All work performed on Sunday shall be paid at time and one-half (1½) the employee's straight-time hourly rate of pay except for courtesy clerks who will receive one dollar (\$1.00) per hour for Sunday premium. Employees hired on or after June 1, 2005 shall not be eligible for Sunday premium.
- b. Night Work Premium. All employees hired prior to December 29, 2002 who perform any work for the Employer shall receive a night premium wage, in addition to their regular hourly rate, for all hours or portions of hours worked between the hours of 6:00 p.m. and 6:00 a.m. at thirty-five (35) cents per hour. All employees hired on or after December 29, 2002 who perform any work for the Employer shall receive a night premium wage, in addition to their regular hourly rate, for all hours or portions of hours worked between the hours of 9:00 p.m. and 6:00 a.m. at the thirty-five (35) cents per hour. Employees hired on or after June 1, 2005 shall not be eligible for Night Work premium. All freight crew employees shall receive a night premium wage, in addition to their regular hourly rate, for all time worked between the hours of 10:00 p.m. and 6:00 a.m. at one dollar (\$1.00) per hour.

11.3 – The schedule of minimum salaries found in Appendix "A" of this Agreement shall be maintained and paid by the Employer during the life of this Agreement.

11.4 – Wage statement shall be furnished each payday. Upon termination of employment, the employee shall be furnished a statement for final payment. All employees shall receive their pay weekly.

11.5 – Whenever an employee is required by the Employer to work in more than one store during the same day, reasonable time consumed by the employee between stores, shall be considered as time worked and paid for as part of the regular day's work.

11.6 – Courtesy Clerks. A courtesy clerk is an employee limited to their performance of the following duties:

- (a) Bag and carry out bags and/or boxes containing the customer's purchases after they have been bagged and/or boxed to the customer's vehicle.
- (b) Collect and line up push carts and return them to the store from the parking lot.
- (c) Crate empty bottles.

- (d) Assist customers in handling their purchases at the check out stands or counters.
- (e) Keeping check stand supplies in order.
- (f) General cleaning duties in the store and on the parking lot.
- (g) Return merchandise to the shelves.
- (h) Check prices.
- (i) Facing/conditioning shelves and cases
- (j) Remove merchandise from the shelf which is abandoned or damaged.
- (k) Hang signs.

Courtesy Clerks shall be allowed to maintain the area of the check stands and customer entrances in an orderly condition through clean-up work. Stock supply items throughout the store, which shall not include merchandise for sale. Verify prices against shelf merchandise, return rejected merchandise to shelf, get change for checkers, handle and assist with outdoor plant, Christmas Trees and products, handle/assemble Seasonal merchandise, and assist with Floral tent selling.

Perform all required sanitation duties throughout the stores including, but not limited to, cleaning of parking lot, exterior and interior of the store, restrooms, lunch rooms, floor cleaning, sweeping, mopping and dusting of the store, cleaning of shelves and cases (including the removal from and restocking of shelf/case), etc. Perform general maintenance duties such as changing light bulbs (except for ceiling lights), light painting, etc.

11.7 APC – All Purpose Clerks (APC) are employees who may be assigned to any work performed by the former positions falling under the following classifications: non-food clerk, food clerk, service deli clerk, wall deli, produce clerk, bakery sales, and click list employees, and including all positions associated with these classifications, such as service booth, front end, floral, nutrition, etc.. The provisions of this Article apply only to these employees.

Recognizing that work is currently performed in various departments as established by Smith's (and that Smith's may remove or add departments in the future providing prior notice to the Union of such changes), it is agreed that before an employee is regularly scheduled outside their current home department, that they should be qualified to perform the work of that department, as determined by Smith's. Smith's retains the right to train employees and assign work at its discretion.

To be considered qualified for work in departments outside an employee's home department, the employee shall be provided training for such work and must have successfully performed the work of that department (as determined by management). Management retains the right to train employees for departments at its discretion. Notwithstanding, management agrees to allow APCs to sign-up within their store for voluntary training during the first fifteen (15) days of February, to be effective the first workweek in March, and the first fifteen (15) days in August to be effective the first workweek in September. With respect to voluntary training, it is understood and agreed: Management will train at least two (2) employees, by seniority within each store from the

voluntary list for each department during each six month period referenced above. Nothing herein prevents the Employer from assigning employees to training based on store or company needs.

Employees shall be allowed to bid to another department when a vacancy occurs within their store and provided such employee is of the same status (full-time/part-time) required by the vacancy. If the employees that bid are equally qualified (in management's judgement), seniority will prevail. In no event shall an employee be allowed to successfully bid more than once in any twelve (12) consecutive calendar month period. Management retains the right to determine the number of full-time and part-time positions in each department and thus may move full-time employees between departments, if deemed necessary by the Employer.

Bargaining Note: The parties both want the APC classification to succeed. To that end, the employer agrees to meet with the union (and a small committee appointed by the union, if desired), upon request, to hear concerns related to Smith's continued future implementation of the APC classification.

11.8 – Penalties for Abuse of Restrictions. In the event that an employee performs other duties not set out above, the time spent in such work shall be considered a violation of the contract, which if repeated, will result in the most senior clerk in the store on the day of the violation being paid a minimum of four (4) hours of straight time pay or the time of the violation, whichever is greater. Should a third violation involving a person of the same classification occur in that store within six months of the second violation, then the senior clerk in the store on that day shall be paid a minimum of four (4) hours straight-time pay or the time of the violation whichever is greater. If any further violations of this contract occur, the Company and the Union will meet to discuss what action should be taken against the Employer at that time. A report of any violation of this subsection must be made in writing to the Local District Manager and Local District Personnel Manager setting forth the time and date of the violation, the work performed, the length of the violation and the clerk involved. Employees who violate this clause without the knowledge and consent of store management shall be subject to discipline as called for under Section 4 of this Agreement.

Notwithstanding the foregoing, such penalties shall not apply in the event of an emergency or act of God. Such emergency or act of God shall be defined as circumstances beyond the control of store management, including but not limited to bad weather, accident, illness, etc. To the extent possible, the Company will attempt to call in unscheduled employees in accordance with Section 9.7 during an emergency situation.

11.9 – An employee who is currently classified as a customer service clerk, who requests reassignment in writing, shall be reclassified as a food clerk and will then perform food clerk duties.

Bargaining Note (added 6-6-10) – Notwithstanding, a higher classified employee of the bargaining unit may perform work in a lower classification within their bargaining unit without restriction.

11.10 – Work Between Classifications: It is further understood that Grocery Clerks may perform wall deli work on any day where a Wall Deli Manager or Wall Deli Clerk has been scheduled for eight (8) hours or on the days off of the Wall Deli Manager or Wall Deli Clerk.

11.11 – Employees will be allowed to request to verify their time worked records over the last 60 days with the store manager at his/her convenience. Such review will be conducted within a reasonable period of time following request.

## **SECTION 12.**

### **GENERAL PROVISIONS**

12.1 – No Reduction. No employee who, prior to the execution of this Agreement, was receiving more favorable vacation or pay in excess of that provided herein for the class of work performed shall have his pay reduced or vacations altered as a result of the operation of this Agreement. Wages paid in excess of the minimum established in the Agreement are to be paid to the individual and not to the job. Except as otherwise provided in this Section, the terms of this Contract are intended to cover only minimums of wages and other employee benefits. The Employer may place superior wages and other employee benefits in effect and may reduce the same to the minimums herein prescribed without consent of the Union.

12.2 – Uniforms. The Employer shall furnish all gowns, aprons, and uniforms and pay for the laundering and upkeep of same except when the Employer furnishes sized "drip-dry" uniforms to female employees, the employee will assume the responsibility for laundering and normal care of such sized uniforms.

12.3 – Transfer. Transfers will not be made for arbitrary, capricious or unlawfully discriminatory reasons. If an employee wishes to transfer from one store to another, the employee shall make a request to the District Office in writing, stating the reason why, and when a vacancy of the appropriate classification, job skills and full-time or part-time status occurs in that store, the Company will make a reasonable effort to accommodate the employee. Within fifteen (15) days of any denial the employee may request that the Employer state the reason, in writing. No employee will be transferred into a store unless a legitimate vacancy exists for a transfer. The Employer shall have the right to transfer department managers within the bargaining unit as needed to meet the needs of business, provided the first sentence of this sub-section is followed.

12.4 – Compensable Injury. When an employee suffers a job related injury and reports for medical care and it is certified that he/she is unable to continue work, he shall be paid the basic straight-time rate of pay for the scheduled hours not worked on the day of injury. Such hours paid for shall not be counted as hours worked for purposes of computing overtime.

12.5 – If an employee appears in Court or the Police Department on behalf and at the request of the employer, he shall receive his basic straight-time rate of pay for the time spent in making such appearance; and such time shall not be considered as part of the work week under the terms of this Agreement.

12.6 – Employees who are absent because of illness beyond three (3) days shall be required to show a doctor's certificate verifying illness if requested to do so by the management. The Employer shall have the right to require proof of an employee who has a history of calling in sick or where a reasonable doubt exists.

12.7 – With the limited exceptions of the first hour (60 minutes) of business upon store opening of any particular store for customer business and the last one hour (60 minutes) prior to the store closing for customer business, cashiers shall not be required or asked to operate more than one check stand or oversee and/or assist customers at the same time, provided, however, that if additional customers approach either the mainline check stand or the USCAN area and the cashier is performing duties at the other work station, such cashier will call a designated backup cashier to assist the customer.

## **SECTION 13.**

### **HOLIDAYS**

13.1 – Paid Holidays. The Employer agrees that the following days shall be observed as holidays, and employees shall be paid therefore as if the holiday was a regular work day. Probationary employees shall not receive holiday pay, unless they work the holiday.

New Year's Day	Labor Day
Easter Sunday	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	Employee's Birthday
Personal Holiday	

13.2 – Easter Sunday. When any of the above enumerated holidays, other than Easter Sunday, falls on Sunday, the following Monday shall be considered the holiday and observed as such by all employees; providing the Employer's store is open for business on that Sunday.

13.3 – It is expressly understood that no employee coming under the terms of this Agreement will be required to work on Thanksgiving and Christmas calendar days, except in cases of an emergency.

13.4 – Personal Holiday. The Employer shall be given written notice by the employee at least two (2) weeks prior to the Personal Holiday. The Employer will make a reasonable effort to accommodate employee request based on date and time of application. In the event the employee does not request their Personal Holiday prior to November 15th, the Employer may assign such holiday. The Employer reserves the right to determine the number and classification of employees who may take personal holidays on any day or week, provided this determination is not arbitrary and capricious and does not deprive an employee of his or her holiday. Nothing herein excludes Fridays as a day that may be requested and may be granted. Newly hired employees are not eligible for personal holidays until they have been with the Company for at least one year.

13.5 – Birthday Holiday. The Birthday holiday is to be taken within the month in which the Birthday falls, on a day mutually agreeable to the Store Manager and the employee. Employees shall notify the Store Manager of their Birthday before the schedule is posted for the week in which the holiday falls.

13.6 – Holiday Pay. Full-time employees shall receive eight hours holiday pay and



part-time employees shall receive holiday pay based on the average number of hours worked during the last full two-week period worked prior to the holiday week, according to the following schedule:

<u>Average Hours</u>	<u>Holiday Pay</u>
6 but less than 12	2 hours
12 but less than 24	4 hours
24 but less than 32	6 hours
32 or more	8 hours

13.7 – Holiday Pay Requirements. No employee shall receive pay for any holidays not worked, unless such employee has reported for work on his or her regular working day next preceding and next following said holiday. Employees shall be deemed to have reported for work if absence on said day before and the said day after said holiday, is due to express permission from or action of the Employer, and also in case of certified illness; provided the employee has worked during the holiday week. Employees shall receive either sick pay or holiday pay, but will not receive pay for both.

13.8 – Sunday and Holiday Work.

- (a) Regular full-time employees called in to work and who work on Sunday and/or holidays will be given eight (8) hours work.
- (b) Employees required to work on Holidays will be paid for the hours worked at double their hourly rate of pay in addition to the holiday pay as provided above. Employees hired on or after June 1, 2005 shall receive \$1.00 per hour for hours worked on a holiday in addition to any holiday pay if applicable.
- (c) All hours worked over thirty-two (32) hours in a holiday week will be paid at time and one-half (1½) the employee's straight-time hourly rate of pay.

13.9 – Full-time employees may be scheduled four (4) days including the holiday on a holiday week.

13.10 – Three-weeks prior to such holiday listed in Section 13.1, the Employer shall post a work roster, and employees may sign such roster if they wish to work the holiday, up to the Wednesday before the schedule is to be posted. Employees who sign the roster shall be assigned such holiday work in order of their seniority. Should there not be sufficient volunteers, the Employer may assign work in inverse order of seniority.

13.11 –. Notwithstanding anything else in this Section 13, employees hired on or after June 1, 2005 shall only be eligible for Labor Day, Thanksgiving, and Christmas holidays (after having worked their probationary period), and effective after the employee's 3<sup>rd</sup> anniversary date of employment, Fourth of July, and New Year's Day. Employees hired on or after June 1, 2005 shall be eligible for three (3) personal holidays effective following their one-year anniversary date of employment.

## **SECTION 14.**

### **NO STRIKE – NO LOCKOUT**

14.1 – During the term of this Agreement, neither the Union nor any employee will encourage, authorize, participate in or condone any strike. Strikes include any work stoppage, slowdown, picketing or sympathy strike which would interrupt or limit the performance of services, customer utilization or other use of facilities.

14.2 – The Union will use its best efforts to prevent any violations of this section and to terminate any violation should one occur. If a violation of this section occurs, the Union will publicly denounce the strike, and will provide the Company and employees with written notice that the strike is not honored. If the Union carries out its obligations under this section, it shall have no financial liability for any such violation.

14.3 – The Employer has the right to take disciplinary action against any employee who violates this section.

14.4 – In the event of a claim by the Company of a violation of this section, written or telegraphic notice shall be given to the Union. The Company may thereupon request the American Arbitration Association to appoint an arbitrator to hear and decide the claim on an emergency basis. The hearing shall be held within forty-eight hours or as soon thereafter as possible. The parties may not file and the arbitrator shall not receive post-hearing briefs with respect to the issuance of an immediate restraining order. The arbitrator shall have the authority to continue the hearing and to request post-hearing briefs with respect to the issue of damages.

14.5 – No Lockout. The Employer agrees that there shall be no lockout.

## **SECTION 15.**

### **GRIEVANCE AND ARBITRATION**

15.1 – The Union or any employee in the Bargaining Unit who has any dispute or disagreement of any kind or character arising out of or in any way involving the interpretation or application of this Agreement, shall submit such dispute or disagreement for resolution under the procedures and in the manner set forth in this Section.

15.2 – The dispute or disagreement shall be submitted to the following:

- a) Step 1. The Union or the employee, as the case may be, shall discuss the dispute or disagreement promptly, but no more than fifteen (15) days after the occurrence of the event giving rise to the dispute or disagreement with the Store Director at the Store. This Step shall include a full discussion of the issue of the grievance and both parties shall make every reasonable effort to resolve the grievance at this step. Any settlement reached at this step shall not establish any precedent and shall be without prejudice. An employee having a dispute or disagreement shall be entitled to be accompanied by a Representative of the Union in Step 1 of this Section 15.2.
- b) Step 2. If the dispute or disagreement is not settled in a manner

satisfactory to the Union and the Employer, The Union shall reduce the Grievance to writing and deliver it or mail it to the Employee Relations Representative of the Employer no more than ten (10) days from the meeting at Step 1.

The written grievance shall include a statement of the grievance, date of occurrence, parties involved, and (if possible) the provisions of the Agreement alleged to have been violated. The Employer Representative shall have fourteen (14) working days upon receipt of the written grievance to answer said grievance.

- c) Step 3. If the dispute is not settled to the satisfaction of the Union, or the Employer representative does not respond within the fourteen (14) day limit, the Union may request arbitration.
- i) Request for Arbitration. In order to request arbitration, the Union must submit a request in writing to the Employer Representative. That request must be post-marked no more than 30 calendar days after the Union receives the Employer's denial of the grievance or the expiration of the fourteen (14) day time limit.
  - ii) Pool of Arbitrators. Rather than receiving arbitration panels from the Federal Mediation and Conciliation Service, the Union and the Company will create a pool of forty arbitrators by selecting twenty (20) different arbitrators each. The parties recognize that arbitrators may leave the panel from time to time, and as such each recognizes the right of the other to maintain its respective share of the pool of arbitrators at twenty (20) arbitrators each through the appointment of a replacement as may be needed. In order to be eligible for the pool, those arbitrators must be members of the National Academy of Arbitrators who maintain an office in Colorado, Oklahoma, Texas, New Mexico, Arizona, Utah, Nevada or California. Each of the arbitrators in the pool will be assigned a number from one through forty.
  - iii) Selection of arbitrators. Within seven (7) business days of the Company's receipt of the Union's written request for arbitration, the Company and Union (or their respective counsel) will meet to attempt to mutually agree on the selection of an arbitrator, or, if that fails, to select a panel of seven arbitrators from the pool of arbitrators. This selection will be accomplished through the use of a random number generator program mutually agreeable to the parties. The seven numbers selected will correspond to the numbers of seven arbitrators from the pool. Those seven arbitrators will comprise the panel.
  - iv) Striking Arbitrators. Within 7 business days of the panel selection, the Company and the Union (or their respective counsel) will select an arbitrator from the panel by alternately striking arbitrators from the panel. The aggrieved party shall strike first.
  - v) The Union and the Company (or their respective counsel) shall jointly contact the selected arbitrator.

15.3 – The decision of the arbitrator shall be final and binding upon each party; however, the arbitrator shall not have the power to add to, subtract from or in any way modify the terms of this Agreement, and shall limit his decision strictly to an interpretation of the language of this Agreement. In the event an arbitrator awards back pay, he shall reduce such award by all earnings, including unemployment compensation received by the aggrieved party during the period of the award. The expenses of the arbitrator shall be shared equally between the Employer and the Union.

15.4 – No grievance may be submitted to arbitration by the Union under Step 3, unless the time limit set forth in Step 2 for the filing of the grievance in writing has been strictly complied with. Any grievance which is submitted after such time limit has expired shall be forfeited and waived by the aggrieved party.

Failure by the Union or the employee, as the case may be, to observe the time limit set forth in 15.1, shall not constitute a waiver, unless such failure is willful. Time limits may be extended only by mutual agreement in writing signed by both the Union and the Employer.

15.5 – At any step in this grievance procedure, the Executive Board of the Local Union shall have the final authority, in respect to any aggrieved employee covered by this Agreement, to decline to process a Grievance complaint, difficulty or dispute further if in the judgment of the Executive Board such grievance or dispute lacks merit or lacks justification under the terms of this Agreement to the satisfaction of the Union's Executive Board.

15.6 – The arbitration procedure herein set forth is the sole and exclusive remedy of the parties hereto and the employees covered hereby for any claimed violations of this Contract, and for either party during the term of this Agreement, and such arbitration procedure shall be (except to enforce, vacate or modify awards) in lieu of any and all other remedies or forums of law, in equity or otherwise which will or may be available to either of the parties.

## **SECTION 16.**

### **HEALTH AND WELFARE**

16.1 – Trust Fund. Effective June 30, 2015, employees shall cease to participate in the New Mexico UFCW Unions and Employers Health and Welfare Trust Fund (“New Mexico Health Fund”). Effective July 1, 2015, the New Mexico Health Fund shall be merged with, and employees of the bargaining unit and their eligible dependents shall participate in, the United Food and Commercial Workers and Employers Arizona Health and Welfare Trust (“Arizona Health Fund”) on the same basis in terms of Plan rules and regulations, eligibility for benefits, benefit designs and employee co-premiums as employees covered under the Fry’s Food and Drug collective bargaining agreement. Except as modified herein and until such time as a merger with the Arizona Health Fund has been completed, employees shall participate in the New Mexico Health and Welfare Fund as provided in Section 16 of the collective bargaining agreement which expired June 7, 2014. Except, spouses who were eligible for benefits and who were enrolled on the New Mexico Health Fund on the date of ratification who by virtue of their participating spouses (employees) date of hire would be ineligible to participate in the Arizona Fund Plan will be grandfathered in under the current

New Mexico Fund tunnel for spousal eligibility.

The Trustees of the Arizona Health Fund shall establish separate accounting for the New Mexico group with the understanding that contributions from the New Mexico employers shall not be used to provide, or subsidize benefits for the Arizona group and that contributions from the Arizona Employers shall not be used to provide, or subsidize benefits for the New Mexico Group. Administrative expenses shall be prorated between the groups as determined by the Trustees of the Fund.

Effective January 1, 2015 the New Mexico Plan A benefits shall be modified to the same benefits as Arizona Plan A, the New Mexico Plan B benefits shall be modified to the same benefit provisions as Arizona Plan B and the New Mexico Plan C benefits shall be modified to the same benefit provisions as Arizona Plan B1, except the co-insurance rates for participants who will be covered under Arizona plan A or B, shall continue to be equal to those co-insurance rates which applied to those participants under the New Mexico Health Fund until otherwise modified by the Trustees of the Arizona Health Fund. Further except, the short-term disability benefit for the New Mexico group shall be the same provided under the New Mexico Health Fund. Additionally, effective January 1, 2015, the administration of the New Mexico Health Fund shall be switched to the same administrator handling the Arizona Health Fund.

It is further understood that as a condition of receiving the contributions provided below, the Trustees of the Plan will establish Plan(s) of benefits, which can be supported by the contributions provided herein and such Trustees shall have the authority to modify such benefits as they deem necessary to maintain the Plan in a fully reserved status.

The Trustees of the New Mexico Health and Welfare Fund shall be directed to promptly pursue a merger with the Arizona Health and Welfare Fund as provided herein and during such period the Long Term Funding Policy of the Plan shall be suspended through June 30, 2015.

16.2 – Employer Contributions. The Employer shall continue to contribute to the New Mexico Fund the amounts described below each month by the twentieth (20th) day of the month for each of its eligible employees covered under Plan A, Plan B and Plan C but on the same eligibility basis as is required under the Fry's Food and Drug collective bargaining agreement, except that such contributions shall continue to be made on a Per Employee Per Eligible (PEPM) basis. Employer Contributions will make contributions on all eligible employees, in all plans, regardless of opt out status. Such contributions shall be made to the Arizona Health Fund. In the event Fry's Food and Drug increases, or decreases, its employer contribution rate into the Arizona Fund, then the employer contribution rates required under this agreement shall be increased, or decreased, by the same percentage and at the same time as the Fry's rates are increased, or decreased. Employee Contributions to be paid shall be the same as the Arizona Fry's group. Contribution increases will continue to match the percentage increases of Smith's / Fry's in Arizona.

16.3 – Eligible Employees. Eligibility for coverage shall be as defined in the Fry's Food and Drug collective bargaining agreement and by the Arizona Health Fund.

16.4 – The Company's Welfare Plan, life insurance, hospital and surgical-medical insurance, weekly health and accident insurance and sick leave plan have previously been discontinued. Prior accrued sick leave benefits were frozen on the prior termination date

and employees shall be eligible for past-earned benefits under the plan as frozen at that time but no further sick leave shall accrue. Sick leave shall not be paid except for those days not provided for by any weekly income benefits which would be paid by the Health and Welfare Plan. Accrued sick leave is not convertible to cash.

16.5 – If legislation is enacted which affects Health and Welfare or related benefits, or costs of providing them, this Contract may be opened by either party upon thirty (30) days written notice to the other party for the purpose of negotiating the Section so affected only.

## **SECTION 17.**

### **LEAVES OF ABSENCE**

17.1 – Upon request, the Employer shall grant a written leave of absence to any employee who needs one for the following reasons:

- (a) Illness or Injury – As a result of non-occupational illness or injury up to the extent of recovery but not to exceed six (6) months.

Extensions of such leaves shall be granted by the Employer, solely upon the presentation by the employee of written request for extension supported by medical evidence of continuing disability and a reasonable expectation to return to work within no more than one (1) year's total leave.

- (b) Occupational Illness or Injury – As a result of a work related illness or injury up to the extent of recovery but not to exceed six (6) months.

Extensions of such leaves shall be granted by the Employer, solely upon the presentation by the employee of written request for extension supported by medical evidence of continuing disability and a reasonable expectation to return to work within no more than one (1) year total leave.

- (c) Personal Leave – Leaves of absence without compensation for reasonable periods may be granted by the Employer at his discretion to employees who have completed one (1) year of service.

- (d) Family Leave – Leaves of Absence of up to one year shall be granted to any employee who upon request shows that they need to provide care for a member of the employee's immediate family.

- (e) Military Leave – Leaves of absence shall be granted in accordance with Federal or State laws to employees going into the military.

- (f) Family Medical Leave Act – When an employee takes a leave of absence pursuant to the FMLA it shall be the employee's decision whether to also concurrently take vacation or personal days.

17.2 – An employee may not accept other employment while on leave of absence and may be terminated for violation of this provision, except where written consent has been obtained from the Employer.

17.3 – All leaves of absence, except where expressly provided, are understood to be leaves without pay. Holiday pay shall not be paid to any employee on leave of absence.

17.4 – This Section shall not be used to justify or support excessive absenteeism, and, should the Employer wish to verify an employee's illness or his ability and/or inability to perform the work required, it may employ a doctor of its choosing for such purpose, paying all charges for such doctor's services.

17.5 – Seniority shall continue to accrue while on any type of leave of absence.

## **SECTION 18.**

### **FUNERAL LEAVE**

18.1 – Upon request, an employee covered by this Agreement, shall be granted reasonable time off in order to make arrangements for and/or to attend the funeral occasioned by a death in his immediate family. All hours paid for funeral leave shall be counted towards hours worked for the purpose of health and welfare eligibility and vacation calculation.

- (a) Employees will be compensated for time off to a maximum of three (3) regularly scheduled work days in an amount equal to his straight-time hourly rate, times the number of hours (up to eight (8) per day) he would have been scheduled to work.
- (b) Payment will be made for a day of absence only if such day is one of the three (3) days either commencing with the day of death or with the day immediately following the day of such death and is a day on which the employee would have worked had it not been for the absence.
- (c) If an employee is notified of the death of a member of his immediate family while at work, he shall be allowed the remainder of his work day off if he so wishes. His funeral pay would begin at the time of his leave but would be extended by the number of hours he had worked that day if the full three (3) days of funeral leave pay is necessary.

18.2 – Immediate family, used in this Section shall be defined as the employee's parents, step-parents, in-law parents, spouse, children, step-children, brothers, sisters, grandparents, and grandchildren.

## **SECTION 19.**

### **JURY DUTY**

19.1 – Employees who are required and report for jury duty shall be paid by the Company for each day partially or wholly spent in performing jury duty an amount equal to the difference between the employee's regular straight-time hourly rate times the number of hours (up to eight (8) that he otherwise would have been scheduled to work and the compensation received for jury duty (excluding amounts received as reimbursement for expenses or as a travel allowance). Such hours paid for shall not be counted as hours worked for purposes of computing overtime.

19.2 – In order to be eligible to receive payment under this Section, an employee must notify his store manager on his first work day after receipt of the notice to report for jury duty and must furnish satisfactory evidence that jury duty was performed and the amount of compensation received for such service on the days for which payment is claimed.

19.3 – If an employee is notified to do so by the store manager or assistant manager when he is excused from jury service either temporarily or permanently, on any scheduled work day, the employee shall promptly report to complete any remaining hours of his scheduled work day; provided, no employee shall be required to so report for work on any day on which he has served and been compensated by the Court for at least eight (8) hours jury duty, nor shall any employee who reports back to work under this Section be required to work more than ten (10) hours, less the number of hours for which served and compensated for jury duty by the Court on that day.

19.4 – Jury duty pay shall not exceed thirty (30) working days per year.

## **SECTION 20.**

### **PENSION**

20.1 – The Employer shall pay thirty-five (35) per hour for all hours worked at straight time (including hours worked on Sunday), for all employees covered by this Agreement into an Employer-Union Pension Fund, which shall be jointly administered by the Union and the Employer by an equal number of Trustees as provided in an agreement establishing such Pension Fund. Though no contributions are required on Courtesy Clerks, they shall be granted past service credits if promoted from the Courtesy Clerk classification. Holiday and vacation hours shall be added to those hours for which the above mentioned contributions shall be made.

20.2 – The Employer's contributions on eligible employees hired prior to June 1, 2005 shall be increased in accordance with the following schedule during the life of this agreement.

- (a) Hours worked beginning December 1, 1981, forty cents per hour.
- (b) Hours worked beginning January 1, 1985, forty-five cents per hour.
- (c) Hours worked beginning March 1, 1992, fifty-five cents per hour.
- (d) Effective on a mutually agreeable date, pension contributions may be reduced to forty cents per compensable hour for a period of thirty-six months, at which time they shall return to fifty-eight cents per hour.
- (e) The Employer may defer payments to the Desert States Employers and UFCW Unions Pension Trust Fund in accordance with the 1998 Settlement Agreement reached between the parties.
- (f) Hours worked beginning June 2005, sixty-eight cents per hour.
- (g) Hours worked beginning June 2006, seventy-eight cents per hour.
- (h) Hours worked beginning June 2007, eighty-eight cents per hour.
- (i) Hours worked beginning June 2008, ninety-eight cents per hour.



20.3-The Employer contributions for employees hired on or after June 1, 2005 will commence on the later of one (1) year of service with the Employer or twenty-one (21) years of age and shall be at a rate of (\$0.48) cents per straight-time compensable hour.

(a) The Employer agrees to make any change in the contribution rate to the Desert States Pension Fund during the term of the 2022 to 2025 Agreement as the Smith's clerks in Arizona contributing to this fund.

(b) Service Deli and Wall Deli- If, as of the date of ratification, the Employer has made a contribution to the meat pension on behalf of an employee in the Service Deli or Wall Deli classification, it shall continue to do so (according to the terms of the pension provision of the respective meat agreement) for the duration of that employee's continuous employment with the Employer within the Service Deli or Wall Deli classification (as the case may be); but these employees shall be covered under the retail agreement for all other purposes.

20.4 – Pension Protection Act. The bargaining parties agree and understand that the Employer's obligation to make pension contributions in addition to the base contribution rate specified in Section 20.2 and 20.3 of this Agreement shall be limited to the contribution rates required in the attached Alternate Schedule (modified only as provided herein) as follows: effective with hours worked in December 2009 a supplemental contribution of ten cents (\$0.10) per contribution-eligible hour; effective with hours worked in December 2010 an additional supplemental contribution of fifteen cents (\$0.15) per contribution-eligible hour; and effective with hours worked in December 2011 an additional supplemental contribution of fifteen cents (\$0.15) per contribution-eligible hour. These supplemental contribution increases, in the aggregate, shall not exceed \$0.40 cents per contribution-eligible hour during the term of this Agreement. It is understood and agreed that the Employer may reduce the amount of any supplemental contribution due the Trust (but not below zero) by the amount of any surcharge, deficiency or excise tax required to be paid by the Employer as a result of the plan's being in the Red Zone under the Pension Protection Act (the "PPA"), including any amounts paid after January 1, 2009, the date the plan entered the Red Zone, and shall be accounted for in the form of a contribution credit. The supplemental contributions provided for herein shall be dedicated solely to improving the funding of the Plan, and shall not be used to increase or improve benefits, and will be reduced or discontinued upon determination by the Plan's Trustees, based on projections provided by the Plan's actuaries, that such supplemental contributions are no longer needed to support the level of benefits provided for under the Plan in accordance with the provisions of subsection (iv).

As a result of the Plan's having been certified and being in critical status for the Plan Year beginning January 1, 2009, the Trustees have adopted the Rehabilitation Plan Alternate Schedule attached as Exhibit B hereto. The Alternate is hereby deemed approved by the bargaining parties and automatically incorporated into this Agreement.

- i. The Alternate Schedule with respect to the Smith's bargaining units shall be effective with hours worked in December 1, 2009 paid in January 2010 as to the supplemental Employer contributions required in this subsection, and January 1, 2011, as to benefit reductions.
- ii. The Trustees are authorized and directed to adopt and take into account to the extent legally permitted any relief available under IRC

Section 431(d). Notwithstanding the foregoing, and unless and until further judicial, legislative or regulatory guidance is provided which resolves the issue, the Trustees shall not apply Proposed Regulation 1.432(b)-1 to allow an exit from the Red Zone by taking into account any Section 431(d) extensions unless the Plan will not re-enter the Red Zone without taking into account those Section 431(d) extensions.

- iii. In no event shall any contribution increases be required during the term of this Agreement as a result of any annual updates or other changes to the Rehabilitation Plan Alternate Schedule or, if applicable, to any Default Schedule.
- iv. The payment of the additional contribution to the New Mexico UFCW Health and Welfare Trust shall continue unless the Pension Plan actuaries determine that the diverted rate of contributions is again needed by the Pension Plan for PPA compliance, in which event the contributions to the Health & Welfare Trust shall be restored prospectively to the Pension Trust to the extent it is determined to be needed again by the Plan actuaries. Under no circumstances shall the Employer be required to pay any amounts to the Health and Welfare Trust under this subsection (v) beyond what the Employer would have otherwise paid to the Pension Trust as provided in this Section (20.4). In addition, in the event the Employer is required to pay any additional contributions to the Health and Welfare Trust under this subsection (v) the full reduction in benefits as provided in the Rehabilitation Plan attached as Exhibit B shall remain in effect provided that if the employer supplemental contribution is reduced to zero, the reduced benefits shall be restored up to the benefit levels immediately prior to the pre-Rehabilitation Plan schedule benefit reductions to the extent the remaining contributions and assets permit.

The Employer may defer payments for the length of time permitted by the Desert States Employers and UFCW Unions Pension Trust Fund.

- v. The Board of Trustees is authorized and directed to take all reasonable measures to cooperate and assist in achieving these objectives, including consistent with their fiduciary obligations adoption of actuarial methods statutorily available that will reduce requirements for supplemental contributions.
- vi. If legislative changes and/or regulatory changes or interpretations occur affecting the PPA during the term of this Agreement, the Board of Trustees is authorized and directed to mitigate any benefit reductions and any contribution increases set forth in the Alternate Schedule and this Agreement to the extent permitted by law, and in accordance with the provisions of subsection (iv) and (v).

20.5 – Said Pension Fund shall be used to provide benefit pensions for eligible employees of the Employer as provided in a Pension Plan, the term and provision of which are to be agreed upon by the parties hereto: said Pension Plan shall, among other things, provide that all benefits under the Plan and costs, charges, and expenses of administering the Plan and all taxes levied or assessed upon or in respect of said Plan or Trust or any income there from shall be paid out of the Pension Fund.

20.6 – Said Pension Plan and the Trust Agreement establishing the Pension Fund has been submitted to the United States Treasury Department and the United States Department of Labor for the approval and rulings satisfactory to the Employer, that said Plan is qualified under IRC Section 401, et seq. and that no part of such payments shall be included in the regular rate of pay of any employee.

20.7 – It is agreed by and between the parties hereto that when the Pension Plan is approved by the United States Treasury Department and the United States Department of Labor and becomes operative and the Employer makes contributions into the fund those employees covered by this Agreement shall automatically cease to participate in the Employer's Retirement Plan then in effect.

20.8 – The Employer shall be represented by its employees, or some other representative on the Board of Trustees administering such Pension Plan. A copy of the Trust Agreement and any amendments thereto shall be made a part hereto as if herein at length see forth, when adopted.

20.9 – If for any reason the United States Treasury Department and the United States Department of Labor withholds approval and rulings satisfactory to the Employer, the parties to this Agreement hereto agree to negotiate other fringe benefits or wage increases in the amount equal to the cents per hour provided for in this Section for all hours worked at straight-time in lieu of payments into the Pension Fund, and that those employees who are eligible will continue to participate in the Employer's Retirement Plan.

20.10 – As a result of the Pension Plan's announcement that it was certified as being in yellow status for the Plan Year beginning January 1, 2010, the Parties acknowledge that as of the effective date of this Agreement the Trustees of the Plan have not yet developed and transmitted to the bargaining parties a funding improvement plan for their consideration. Therefore, the Parties have agreed that upon transmission to them of a valid funding improvement plan by the Trustees to re-open Article 20 (Pension Plan) for the purpose of adopting such funding improvement plan if legally required to adopt. The Parties expressly understand and agree that no other Article or provision of this Agreement shall be re-opened unless mutually agreed by the Parties in writing.

## **SECTION 21.**

### **TECHNOLOGICAL CHANGE**

21.1 – The parties recognize that automated equipment and technology is now available for the Retail Food Industry. The Employer recognizes that there is a desire to protect and preserve work opportunities. At the same time, the Union recognizes that the Employer has the right to avail itself of modern technology with this common objective, the parties agree that in the event the Employer introduces major technological change which for the purpose of this Section is defined a electronic price marking and electronic scanner which would have a direct material Impact affecting Bargaining Unit work, sixty (60) days advance notice of such change will be given to the Union. In addition, the parties agree:

- (a) The Employer has the right to install such equipment.

- (b) Any training or necessary retraining will be furnished expense free by the Employer to affected employees.
- (c) Where employees would be displaced by such installation, the Employer will make every effort to effect a transfer.
- (d) If an employee is not re-trained or transferred and would be displaced as a direct result of major technological change, as defined above, then the employees would qualify for separation pay, if:
  - 1. The employee has two (2) or more years of continuous service.
  - 2. Does not refuse a transfer within a twenty-five (25) mile radius.
  - 3. Does not refuse to be re-trained.
  - 4. Such action does not occur more than one (1) year from date of installation.
  - 5. Does not voluntarily terminate employment.
- (e) Severance pay would be paid at the rate of one (1) week's pay for each year of service in excess of two (2) years not to exceed eight (8) weeks.
- (f) Severance pay would equate the average number of hours worked the fifty-two (52) weeks preceding displacement.

## **SECTION 22.**

### **STORE CLOSING**

22.1 – In the event the Employer closes or sells the majority of its stores in New Mexico or Bernalillo County, the Employer agrees to provide the Union with at least sixty days written notice and to meet with the Union for the purpose of negotiating the severance of the employees thus affected.

22.2 – In the event of a sale or transfer of a store or stores, the Employer shall use good faith best efforts to have any successor employer retain all employees covered by this agreement and the Employer shall request that the new owner or transferee make reasonable effort to fill his employment needs in such store or stores from those employees of the seller or transferor who were employees in the stores sold or transferred.

## **SECTION 23.**

### **WAIVER**

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of Collective Bargaining and that all such subjects have been discussed and negotiated Upon and the Agreements contained in this Contract were arrived at after the free exercise of such rights and opportunities; therefore, the Employer and the Union, for the life of this Agreement each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement,

even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

#### **SECTION 24.**

#### **SEPARABILITY**

In the event that any portion of this Agreement is invalidated by the passage of legislation or a decision of a Court of competent jurisdiction, such invalidation shall apply to only those portion thus invalidated, and all remaining portion of this Agreement not invalidated shall remain in full force and effect. In the event any provision or provisions are declared to be in conflict with a law, both parties shall meet immediately for the purpose of renegotiating an Agreement on provisions so invalidated.

#### **SECTION 25.**

#### **SAFETY AND HEALTH**

Master Safety Committee. The Employer agrees to meet quarterly, upon request, but no less than twice each year, with a health and safety committee appointed by the Union to discuss and to recommend implementation of issues employees find to be of concern to their safety and health. This includes, but is not limited to, safety measures to protect employees who periodically work outside the store and includes employees coming to and leaving from work. This Master Safety Committee shall be made up of an equal number of members from the Union and the Company, with each party appointing up to three committee members. If necessary, to address certain issues at a workplace, either party may invite guests, with prior approval of the Committee. The parties anticipate that these meetings shall cover health and safety issues as they arise at the store level, including crime at the stores.

The parties agree that this Master Safety Committee may discuss the trespass of unruly customers from the Employer's stores. The Employer agrees to share information with the Union President (or his or her designee) on a confidential basis, concerning such incidents and customers trespassed from the stores. If the parties agree it is appropriate, such information will be shared with affected employees.

The parties agree to discuss the issue of armed and other security guards within the stores during the term of this Agreement. The Employer and the Union agree that guards, including armed guards and off-duty law enforcement, may be appropriate to ensure employee and customer safety. The Employer agrees to discuss with the Union President (or his or her designee), on a confidential basis, safety and security incidents which may impact the appropriateness of armed guards. The Employer and Union shall also discuss the installation and use of panic buttons in appropriate locations.

During the term of this agreement, the parties also agree that the Master Safety Committee shall also discuss the smart safes in its stores, including issues concerning the location and/or visibility of such safes.

The Company and Union agree that the Employer is responsible for maintaining a sound safety program and its employees are responsible for adhering to the safety program.

The parties further agree that the joint Master Safety Committee may also investigate, study and discuss mutual solutions to problems affecting labor/management relations in a sincere attempt to improve the parties' basic relationship. The committee shall not have the authority to modify the terms of this Agreement.

The parties agree that as part of the joint/labor management aspect of the Master Safety Committee established in this Section, that the parties will meet and confer during the term of this agreement regarding issues concerning full-time employment.

## **SECTION 26.**

### **MUTUAL RESPECT OF THE PARTIES**

It is hereby agreed that members of management and members of the bargaining unit shall make every effort to treat each other with mutual respect. It is specifically agreed by all parties to this Agreement that the use of profanity, raised voices and harassment will not be tolerated in the workplace.

## **SECTION 27.**

### **EEOC**

It is agreed between the parties that they will meet at once in order to resolve any and all EEOC problems of which they are aware. It is further agreed between the parties that nothing contained in this section or otherwise in this Agreement shall in and of itself operate to waive the rights of covered employees to a judicial forum for claims of employment discrimination.

## **SECTION 28.**

### **TERM OF AGREEMENT**

28.1 – This Agreement shall be effective as of February 13, 2022, to and shall remain in full force and effect through its expiration date, June 14, 2025.

28.2 – On or before sixty (60) days prior to the expiration date set forth above, either party hereto may notify the other party in writing of its desire to negotiate the terms and provision of a successor Agreement. Promptly following such notification and during such sixty (60) day period, the parties hereto shall meet and engage in such negotiations.

28.3 – If neither party hereto gives notice to the other party of its desire to negotiate a successor Agreement prior to the expiration date of this Agreement as above provided, this Agreement shall automatically be renewed for successive one (1) year terms thereafter.

IN WITNESS WHEREOF, the parties above named have signed their names and affixed the signature of their authorized representatives on the \_\_\_\_ day of 2024.

**FOR THE EMPLOYER:**  
SMITH'S FOOD & DRUG CENTERS, INC.

**FOR THE UNION:**  
UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL NO. 1564

By: \_\_\_\_\_  
Ian Adams  
Senior Director of Labor Relations

\_\_\_\_\_  
Date

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

By: \_\_\_\_\_  
Greg Frazier  
President

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Analisa Davis  
Secretary-Treasurer

\_\_\_\_\_  
Date

## APPENDIX "A"



## EXHIBIT B

### Desert States Employers & UFCW Unions Pension Plan

#### Schedule of Contributions and Benefits

<b>REHABILITATION PLAN – 2009 PLAN YEAR ALTERNATE SCHEDULE</b>
<b>Contribution and Benefit Adjustments</b>
<ul style="list-style-type: none"><li>• Supplemental contribution rate increase of ten cents (\$0.10) per contribution-eligible hour on hours worked beginning December 2009, a supplemental contribution rate increase of fifteen cents (\$0.15) per contribution-eligible hour on hours worked beginning December 2010 and a supplemental contribution rate increase of fifteen cents (\$0.15) cents per contribution-eligible hour on hours worked beginning December 2011. All contributions are deemed to be inclusive of any surcharges, deficiency, and/or excise tax required to be paid by the Employer as a result of the plan’s being in the Red Zone under the Pension Protection Act (the “PPA”), including any amounts paid after January 1, 2009, the date the plan entered the Red Zone, and shall be accounted for in the form of a contribution credit.</li></ul>
<ul style="list-style-type: none"><li>• Preserve the Rule of 85 Pension</li><li>• Elimination of all other adjustable benefits on all accrued benefits and future benefit accruals to the maximum permitted by law. Adjustable benefits to be eliminated include the following:<ul style="list-style-type: none"><li>— Special Early Retirement Benefit, and Special 20 Benefit;</li><li>— Subsidized Early Retirement Reduction Factors;</li><li>— Age 60 Supplement;</li><li>— Disability Pension;</li><li>— Post-Retirement Death Benefits in Excess of QJSA, including under section 8.8 of IRF Plan (Exhibit E to Plan document) and section 8.3 of Plan;</li><li>— Pre-Retirement Death Benefits in Excess of QPSA, including Special Death Benefit under section 8.9 of IRF Plan (Exhibit E to Plan document);</li><li>— Payment options other than Single Life Annuity and QJSA; and</li><li>— All other adjustable benefits within the meaning of Code section 432(e)(8)(A)(iv) other than the Rule of 85 Pension.</li><li>— Reduction of future benefit accruals to the PPA 1% floor benefit (1% of contributions required under the Collective Bargaining agreements in December 2008, the month before the plan entered Critical Status)</li></ul></li><li>• Benefit reductions effective January 1, 2011</li></ul>
<b>Rehabilitation Period</b>
January 1, 2012 through December 31, 2024.
<b>Plan to Emerge from the Red Zone and Annual Benchmarks to Assess Progress Toward Emergence</b>
The Plan’s actuaries certify that the Contribution and Benefit Adjustments shown above are

sufficient for the Plan to emerge from the Red Zone at the end of the Rehabilitation Period based on the funded status of the Plan as of January 1, 2009. This schedule will be updated as needed throughout the Rehabilitation Period. Progress toward emergence from the Red Zone will be measured by the Plan's Funding Standard Account Credit (Deficiency) Balance being greater than (less than) the amounts in the following projection. This projection has been made in accordance with the provisions of the Pension Protection Act of 2006 including:

- Contribution rates in accordance with the Collective Bargaining Agreement effective October 26, 2003.
- Assumes 27.6 million contributable hours annually, based on the report for Plan Year 2008 as provided by the Plan Administrator. The reasonableness of this assumption has been verified by the Trustees.
- Assumes projected Normal Costs that are increased to reflect the increase in assumed contributable hours from the contributable hours assumed for 2008 in the January 1, 2008 actuarial valuation; such increase determined so the initial Normal Cost in the projection maintains the ratio of Normal Cost to contributions in that actuarial valuation.
- No actuarial gains or losses from January 1, 2008, forward and no market related investment gains or losses from September 1, 2009, forward.

## Desert States Employers and UFCW Unions Pension Plan

### Annual Benchmarks for Emergence from the Red Zone

<b>As of</b>	<b>Funding Standard Account Credit (Deficiency) Balance</b>
12/31/2010	(586,659)
12/31/2011	22,371,105
12/31/2012	42,619,994
12/31/2013	58,932,090
12/31/2014	47,857,879
12/31/2015	35,592,819
12/31/2016	22,403,200
12/31/2017	11,158,807
12/31/2018	5,717,203
12/31/2019	1,948,976
12/31/2020	887,505
12/31/2021	2,739,373
12/31/2022	4,919,238
12/31/2023	6,359,892
12/31/2024	23,480,957
12/31/2025	40,277,353

## **Bargaining Notes**

7.6: To invoke the 36 hour language in this paragraph under the “impracticable distance” exception to the same day requirement, the employers’ location must be beyond a 150 mile radius from the intersection of Alvarado and Central Ave. in Albuquerque.

General: Proposal made, but dropped or modified, by either party during negotiations shall not be used as evidence of proper contract interpretation in any dispute or legal proceeding.

Article 20: The parties agree to the Long-Term funding Policy ratified in Arizona and as adopted by the Board of Trustees of the Desert States Pension Fund, together with the accompanying changes to the plan of benefits.

## LETTER OF UNDERSTANDING

### Freight and Dairy Lead

Smith's Food & Drug Centers, Inc. and UFCW Local No. 1564 hereby agree as follows:

The classifications of Freight Lead and Dairy Lead shall be added to the parties' Clerks Collective Bargaining Agreements and thereafter subject to the terms of those agreements, except as contained herein.

The top rate of pay for these classifications shall match that of the head clerk rate of pay found in the respective collective bargaining agreements for each store. In the case of employees hired prior to June 1, 2005 (October 24, 2004 in Farmington), who are promoted to these positions, their rate of pay will move to that rate immediately upon promotion. In the case of employees hired on or after June 1, 2005 (October 24, 2004 in Farmington), they will progress from the relevant Journeyman rate to the relevant Head Clerk rate within two (2) years, with steps divided in six month increments. The progression under each contract shall be initially set by taking the difference between the contract's Head Clerk rate and the after hired journeyman rate for food clerks (or warehouse clerks, in the case of Price Rite) and dividing the difference into approximately equal increments using steps of six months each. For example, in Albuquerque, where the Head Clerk rate beginning June 2, 2013 is \$15.67 and the hired after food clerk journeyman rate is \$12.05, the following progression would be used:

<b>Time in Position from Promotion</b>	<b>Current Rate</b>	<b>Effective October 26, 2014</b>	<b>Effective June 12, 2016</b>
First Six (6) months	\$12.77	\$13.02	\$13.27
Second Six (6) months	\$13.49	\$13.74	\$13.99
Third Six (6) months	\$14.21	\$14.46	\$14.71
Fourth Six (6) months	\$14.93	\$15.18	\$15.43
Top Rated	\$15.67	\$15.92	\$16.17

After hired employees who may already be at the head clerk rate, will not have their wage reduced on account of their promotion to the Dairy Lead or Freight Lead.

The Dairy Lead and Freight Lead in each store shall initially be offered to those employees, if any, found on the attached list.

To the extent there is a hard money increase in future contract negotiations under any of the collective bargaining agreements, or at any time these rates increase, the top rate for these classifications will be eligible for that increase and the steps will be revised as mentioned above.

Neither party has given up any position or interpretation of the Collective Bargaining Agreements, and no proposal, e-mail, or discussions in this matter will be used as evidence.

**FOR THE COMPANY:**

SMITH'S FOOD & DRUG CENTERS, INC.

---

Ian Adams  
Senior Director of Labor Relations

---

Date

Store #409  
Lead Dairy: Richard Wilson  
Lead Freight: Reb Beach

Store #413  
Lead Dairy: Robert Peralta  
Lead Freight: Nathan Salazar

Store #414  
Lead Dairy: Angela Harmon  
Lead Freight:

Store #415  
Lead Dairy: Marty Aragon  
Lead Freight: Floresa Erice

Store #423  
Lead Dairy: Blake Garcia  
Lead Freight: Samuel Delillo Vogt

Store #424  
Lead Dairy: Martin Chavez  
Lead Freight: Elbie Jernigan

Store #426  
Lead Dairy: Richard Garcia  
Lead Freight: Robert Medina

Store #427  
Lead Dairy: Cesar Rey  
Lead Freight: Julian Miranda

Store#432  
Lead Dairy: Daniel Gutierrez

**FOR THE UNION:**

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1564

---

Greg Frazier  
President

---

Date

Store #450  
Lead Dairy: Marcus Flores  
Lead Freight: Jacob Ortega

Store #459  
Lead Dairy: Michael Thorp  
Lead Freight: Derek Padilla

Store #461  
Lead Dairy: Michael Morales  
Lead Freight: Aida Enriquez

Store #463  
Lead Dairy: Victor Arvizo  
Lead Freight: Brian Grubbs

Store #485  
Lead Dairy: George Salas  
Lead Freight: Travis Dehart

Store #491  
Lead Dairy: Martin Jasso  
Lead Freight: Raymond Duran

Store #494  
Lead Dairy: Chris Roberts  
Lead Freight: MJ Payne

Store #496  
Lead Dairy: Herman Gutierrez  
Lead Freight: Mike Flenniken

Store #497  
Lead Dairy: Lloyd Rodriguez

Lead Freight: Gabe Martinez

Store#439

Lead Dairy: Johnny E Candelaria

Lead Freight: Matthew T Gwyn

Store #443

Lead Dairy: Matthew Medina

Lead Freight: Arthur Herrera

Store #446

Lead Dairy: Armando Reyes

Lead Freight: John Fleshman

Store #448

Lead Dairy: Eloyd R. Saavedra Jr.

Lead Freight: Benjamin Trujillo Jr.

Lead Freight: Angel Herrera

Store #498

Lead Dairy: Marcos Bustillos

Lead Freight: William Rivera Feliciano

Store #499

Lead Dairy: Eric Spargo

Lead Freight:

Store #571

Lead Dairy: Mark Gutierrez

Lead Freight: Emir Romero

## LETTER OF UNDERSTANDING

This letter of Understanding is made on this \_\_\_\_\_ day of December, 2002 and is executed by and between United Food and Commercial Workers Union Local No. 1564 and Smith's Food & Drug Centers, Inc.

- (1) Employees hired through the acquisition of Furr's stores shall have seniority date for purposes of scheduling, bumping and claiming as the original hire date with Smith's Food & Drug Centers, Inc. Section 9.1 shall apply for purposes of breaking seniority, except the employees whose names appear on the attached list shall have seniority broken among themselves by using their seniority date with Furr's:

[LIST-to be attached]



Letter of Understanding

By and Between

Smith's Food & Drug Inc.

And

The United Food and Commercial Workers Union Local 1564

This Letter of Understanding (LOU) summarizes the key elements associated with the establishment of a new retail department known as 'ClickList' and specifically how the program will be integrated into the business format within current retail stores. These elements will be in place until such time as the Company discusses new or modified elements with the appropriate Union representatives or the Company elects to discontinue any or all of the same. The summary of the key elements are as follows:

Current retail store employees shall be given the opportunity to express interest for available ClickList positions. The current positions include: Order Selector and Customer Attendant. These positions shall be paid at the applicable Food Clerk classification rate of pay based on date of hire. It is expected that employees will work between these two positions. These positions are to be considered to be part of the same classification and department for purposes of Section 9.6(c) of the CBA.

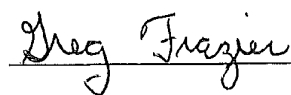
The Employer will be allowed (1) additional exemption under Section 1.1 of the Agreement in each store with a Click List/eCommerce department. It is understood that with regard to this exemption, that the Company is restricted from having this position perform bargaining unit work outside of the ClickList/eCommerce department.

The Company may also elect to employ a department lead, which shall be paid a fifty cent an hour premium above the applicable journey person rate of pay for the department based on date of hire.

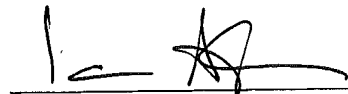
Parties agree that all provisions of the CBA remain in full force and effect except as mentioned in this agreement.

Dated this 26th day of August, 2016.

For the Union:

  
\_\_\_\_\_

For the Employer:

  
\_\_\_\_\_



May 31, 2019

Greg Frazier, President  
U.F.C.W. Local 1564  
130 Alvarado Drive, N.E.  
Albuquerque, N.M. 87108

Re: Murray's Cheese Positions at Smith's Stores subject to various Collective Bargaining Agreements with UFCW 1564

Dear Greg:

In light of Smith's pending addition of a Murray's Cheese operation at its Store #496 in Albuquerque, New Mexico, I am writing to memorialize our understanding with regard to two positions associated with Murray's Cheese operations run by Smith's in its stores covered by collective bargaining agreements with UFCW Local 1564. These positions are the Murray's Cheese Clerk and the Murray's Cheese Lead.

It is agreed that these two positions shall be considered part of the clerks' collective bargaining agreement covering the store in which the Murray's Cheese operation is located and will otherwise be subject to the terms of that agreement. These are specialty positions and it is agreed that the hours and schedules assigned to these positions shall be protected and only available to the person assigned by Smith's to the position.

The wage schedule for the Cheese Clerk shall be the same as that for the APC classification for the store in question. The Murray's Cheese Lead shall pay a premium rate of pay of the APC journeyman rate, plus \$1.00/hr. (currently the top APC rate of pay in Smith's various clerks CBA's is \$13.25, so the Murray's Cheese Lead rate of pay would currently be \$14.25.)

To the extent there are lump sum bonuses or hard money increases still available on a prospective basis under the current collective bargaining agreement, the rates for these positions will be eligible for those moneys according to the terms of the collective bargaining agreement. Smith's, of course, retains complete discretion of whether to use or fill these positions in its stores. Finally, parties agree that this letter of understanding shall apply where Smith's opens Murray's Cheese operations in any other locations in which UFCW, Local 1564 is the designated bargaining agent for a store's retail clerks.

1550 South Redwood Road, Salt Lake City, Utah 84104 • P.O. Box 30550, Salt Lake City, Utah 84130  
Telephone (801) 974-1400

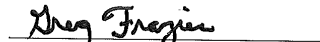
Greg, I appreciate your attention to this matter. Should you have any questions, please feel free to call.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ian Adams', written over a horizontal line.

Ian Adams  
Labor Attorney/  
Employee Relations Director

Agreed to by:

A handwritten signature in black ink, appearing to read 'Greg Frazier', written over a horizontal line.

Greg Frazier, President  
UFCW Local 1564

MEMORANDUM OF AGREEMENT

Smith's Food and Drug Centers Inc. ("Employer") and United Food and Commercial Workers Union, Local 1564 ("Union") agree as follows:

1. Beginning on the first Sunday following execution of this agreement ("Pay Increase Effective Date"), the Lead CSM rate of pay at Employer's New Mexico stores shall be \$1.00 an hour more than the head clerk rate set by the collective bargaining agreement applicable to the store at which that Lead CSM is working.
2. Employees who have worked as a Lead CSM at Employer's New Mexico stores since January 5, 2013, shall receive back pay in the amount of \$0.37 per hour for all hours worked as a Lead CSM from that date through the Pay Increase Effective Date. Those employees, the hours each worked as a Lead CSM, and the back pay due for each under this paragraph through September 27, 2014 is set for in the attached Exhibit A. Employer will update Exhibit A to reflect back pay up to the Pay Increase Effective Date for those employees working as Lead CSMs between September 27, 2014 and the Pay Increase Effective Date, and will issue back pay checks to the employees based on those updated amounts.
3. This agreement does not affect the pay rate for the three remaining "grandfathered" Night Service Managers a/k/a Second Assistant Store directors addressed in Section 1.1 of the collective bargaining agreements even though they perform some or all the duties of a Lead CSM and two of those stores do not, at present, have designated Lead CSMs.
4. This agreement fully resolves all open issues in connection with Grievance 13-00031 and the May 26, 2014 Arbitration Award issued in the matter by Arbitrator

Mario F. Bognanno. As a result, there shall be no interest arbitration as required  
by the Award.

**AGREED AND APPROVED:**

Greg Frazier  
Union Representative

10/3/14  
Date

[Signature]  
Employer Representative

10/3/2014  
Date

## LETTER OF UNDERSTANDING EMERGENCY PROVISIONS

This LOU will address emergent issues that may arise in the workplace.

1. If a federal, state, or local government declares a state of emergency, this emergency provision shall apply.

a. Changes in policy, process, or working conditions. The Company will communicate to the Union changes in policy, procedures, and working conditions taken in response to the emergency. The parties recognize that emergencies are dynamic in nature and often decisions are fluid and fast changing. The Company will make its best effort to keep the Union advised of these changes. If any change in working conditions is contrary to any express provisions of the labor agreement, the Company will not make such change without mutual agreement with the Union.

b. Employee Leave. If an employee is unable to perform work due to the nature of the emergency, the Company and the Union will meet and discuss in good faith the proper application of the leave of absence provisions provided by Section 17 of this Agreement and/or any additional leave that the parties may mutually agree to provide.

c. Layoffs. Any layoffs (or recall of employees) as a direct result of the emergency shall be in accordance with the seniority provisions of this Agreement. The Company and the Union may mutually agree to modify or extend various terms (e.g., the parties may agree to extend the period of time an employee may be on layoff without losing seniority), except that layoffs due to the emergency, recall rights are extended to no less than ninety (90) days.

2. Dangerous Emergencies. The Company will continue to maintain (or develop, if applicable) procedures that workers should follow to protect themselves and co-workers during dangerous emergencies. These procedures may include: (a) where workers should go to protect themselves, (b) evacuation plans, (c) what workers should do, and (d) how prompt first aid and emergency treatment will be administered to injured workers. The procedures should also discuss signs that may indicate that a dangerous emergency may occur (such as threats, social media posts or assaults), and encourage workers, customers, and others to report these matters to a manager or security guard, if applicable. The Company may update the training as new procedures to protect workers against dangerous emergencies develop.

The Company may consider training all workers on the dangerous emergency procedures, including how to recognize a potentially dangerous emergency and, where appropriate, how to deescalate emergencies that are reasonably capable of de-escalation. New hires will undergo any such training within the first thirty (30) days of employment.

During a dangerous emergency the Employer agrees that employees do not bear any responsibility to protect any merchandise. Employees should protect themselves and to the extent safely and reasonably possible, co-workers/customers. The Employer acknowledges that employees have a right to defend themselves if there are no other options to avoid the dangerous situation. The Employer agrees to notify the President of the Union, or his or her designee, immediately upon learning of a dangerous

emergency.

3. **Pandemic Safety Measures.** In the event of a novel pandemic or epidemic affecting one or more of the stores covered under this agreement, the Company agrees to meet and bargain with the Union concerning the effects thereof within fourteen (14) days following a written request by the Union. The Company will continue to follow applicable CDC, NIOSH, or OSHA guidelines and any state and federal mandates concerning the pandemic or epidemic.

4. **Vaccine Mandate.** In the event the Employer determines it intends to implement a vaccine mandate, the Employer agrees to meet with the Union and bargain effects of the mandate as far in advance of the mandate's effective date as possible, but not less than two (2) weeks in advance of the mandate's effective date.

5. **Customer Theft.** The Employer agrees that it shall provide training to employees, not less than annually, concerning company policies with respect to interacting with shoplifters.

IN WITNESS WHEREOF, the parties above named have signed their names and affixed the signature of their authorized representatives on the \_\_\_day of \_\_\_\_\_, 2024.

**FOR THE EMPLOYER:**  
**Smith's Food & Drug Centers, Inc**

**FOR THE UNION:**  
**United Food and Commercial  
Workers Union, Local No. 1564**

By: \_\_\_\_\_  
Ian Adams,  
Senior Director, Labor Relations

By: \_\_\_\_\_  
Greg Frazier, President

By: \_\_\_\_\_  
Ian Adams,  
Senior Director, Labor Relations

By: \_\_\_\_\_  
Analisa Davis  
Assistant to the President

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SMITH'S FOOD AND DRUG CENTERS, INC.  
AND  
UFCW LOCAL 1564,  
REGARDING  
NEW MEXICO'S HEALTHY WORKPLACES ACT

The parties to this Memorandum of Understanding ("MOU") are Smith's Food and Drug Centers, Inc. ("Smith's") and the UFCW Local 1564. The parties recognize a new New Mexico law, the Healthy Workplaces Act ("HWA") (effective July 1, 2022) that should be addressed in their collective bargaining agreement(s) ("CBA"). In an effort to ensure full compliance with this new law, the parties incorporate these provisions into their CBA(s) currently in effect. Nothing in this MOU shall limit the parties' rights to bargain for any of the benefits described below in future negotiations. This MOU shall apply to all CBAs between Smith's and UFCW Local 1564 as follows:

1. Smith's employees will accrue one (1) hour of paid sick leave for every thirty (30) hours worked starting from their first day of employment or July 1, 2022, whichever is later.
2. Employees may use their accrued paid sick leave for the sickness, safety, and caregiving purposes described below. Paid sick leave may be used as soon as it is accrued, and must be taken in one (1) hour increments.
3. Unused paid sick leave shall be cumulative. Smith's will allow employees to carry over accrued but unused paid sick leave from year to year, but employees may not use more than sixty-four (64) hours of paid sick leave in any anniversary year.
4. Employees will be paid their regular hourly rate with the same benefits, including health and welfare and pension credits for all hours in which paid sick leave is taken. This regular hourly rate does not include overtime or bonus pay, and paid sick leave is not considered "hours worked" for purposes of determining whether an employee is entitled to overtime in a given workweek.
5. When leave is foreseeable, Smith's expects employees to make a good faith effort to provide advance notice of their need for leave and to schedule the leave in a manner that does not unduly disrupt Smith's' operations. When possible, such requests should include the expected duration of the leave. When leave is not foreseeable, Smith's expects employees to provide notification as soon as practicable.
6. Smith's will allow employees to use their accrued paid sick leave to be absent from work for the employee's mental or physical illness, injury, or health condition; for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or for preventative medical care.
7. Smith's will also allow employees to use their accrued paid sick leave to be absent from work to care for a Family Member who has a mental or physical illness, injury, or health condition; to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or to obtain preventative medical care.



8. For purposes of this MOU, "Family Member" means an employee's spouse or domestic partner, or a person related to an employee or an employee's spouse or domestic partner as:

- a. a biological, adopted or foster child, a stepchild or legal ward, or a child to whom the employee stands in loco parentis;
- b. a biological, foster, step or adoptive parent or legal guardian, or a person who stood in loco parentis when the employee was a minor child;
- c. a grandparent;
- d. a grandchild;
- e. a biological, foster, step, or adopted sibling;
- f. a spouse or domestic partner of any of the forgoing; or
- g. an individual whose close association with the employee or the employee's spouse or domestic partner is the equivalent of a family relationship.

9. Smith's will also allow employees to use their accrued paid sick leave to be absent from work to attend meetings at the employee's child's school or place of care related to the child's health or disability.

10. If an employee or an employee's Family Member is the victim of domestic abuse, sexual assault, or stalking, Smith's will allow the employee to use accrued paid sick leave to obtain medical or psychological treatment or other counseling, to relocate, to prepare for or participate in legal proceedings, or to obtain services or assist a Family Member with any of the forgoing activities.

11. For leaves lasting two (2) or more consecutive workdays, Smith's may request reasonable documentation to establish that the paid sick leave was used for one of the sickness, safety, or caregiving purposes described above. Documentation signed by a health care professional indicating the amount of earned sick leave taken is necessary shall be considered reasonable documentation for sick leave. Smith's may not require the documentation to explain the nature of any medical condition or the details of the domestic abuse, sexual assault or stalking. Smith's shall not delay the commencement of earned sick leave on the basis that it has not yet received documentation.

12. FMLA and other statutory leave may run concurrently with paid sick leave.

13. Sick leave benefits are not convertible to cash. Smith's will not pay out accrued but unused paid sick leave upon an employee's separation from the company. However, if an employee separates from Smith's and is rehired within twelve (12) months after the separation, Smith's will reinstate any accrued but unused paid sick leave from the employee's previous employment.

14. Where the paid sick leave benefits set forth in this MOU overlap with benefits provided in a collective bargaining agreement or trust fund, including unused paid sick leave accrued under a discontinued agreement or plan, the paid sick leave benefits and

parameters set forth in this MOU shall apply first.

15. The parties agree that HWA “shall not be construed to preempt, limit or otherwise affect the applicability of any . . . policy or standard, including collective bargaining agreements, that provides for greater accrual or use by employees of earned sick leave, whether paid or unpaid, or that extends other protections to employees.” 2021 N.M. Laws 131 (H.B. 20) § 12.

16. The parties agree to revise this MOU if necessary to comply with any future amendments to HWA or binding regulations or case law interpreting the statute.

17. The parties agree that any discussions which either party may wish to have regarding changes or additions to the relevant trust fund provisions or other related benefits in the CBA(s), in light of HWA, will be the subject of bargaining.

18. The parties agree that they will use their best efforts to resolve disputes arising out of this MOU and the HWA through the grievance and arbitration process but do not intend by this agreement to limit or prevent the employees’ exercise of all rights set out in the HWA.

Dated this \_\_\_\_\_ day of March, 2023.

SMITH’S FOOD & DRUG CENTERS, INC. UFCW LOCAL 1564

By: \_\_\_\_\_  
Leroy Westmoreland  
Senior Director, Labor Relations

By: \_\_\_\_\_  
Greg Frazier, President

By: \_\_\_\_\_  
Ian Adams,  
Senior Director, Labor Relations

By: \_\_\_\_\_  
Analisa Davis  
Assistant to the President