AGREEMENT

between

Fry's Food and Drug Stores

and

# UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

Term of Agreement October 26, 2014 to October 29, 2016

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THIS AGREEMENT made and entered into this twenty-third day of October, two thousand fourteen, by and between FRY'S FOOD AND DRUG STORES OF ARIZONA, INC. *Maricopa County/Phoenix Metro; Pima County/Tucson Metro; Pinal County; Prescott area;* Flagstaff; Cottonwood; Yuma; and Sierra Vista (each to remain separate bargaining units) hereinafter called "Employer" and Local 99 of UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO & CLC hereinafter called the "Union" or "Local 99."

#### INTENT AND PURPOSE

It is the intent and purpose of the Employer and the Union to promote and improve labormanagement 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 establishments, and in providing for the orderly settlement of disputes between them, the parties to this Agreement agree as follows:

The Union recognizes the mutual desirability of employees patronizing their Employer's stores inasmuch as the Employer's ability to provide the wages, benefits, and working conditions contained herein is dependent upon its sales and agrees to promote such patronage.

#### ARTICLE 1 – RECOGNITION OF THE UNION

- (a) The Employer recognizes the Union as the exclusive representative for collective bargaining purposes for Courtesy Clerks, All Purpose Clerks and Meat Cutters employed by Fry's in the Employer's retail supermarkets and Marketplace Stores in Maricopa County/Phoenix Metro; Pima County/Tucson Metro; Pinal County; Prescott area; Flagstaff; Cottonwood; Yuma; and Sierra Vista each as separate bargaining units, except the following: Office Clerical, Guards, Greeters, Watchmen, Security Personnel, Pharmacists (including Pharmacy Manager), Pharmacy Interns, Store Manager, Assistant Store Manager, Bakery Manager, Front-End Manager, Grocery Manager, Produce Department Manager and Meat Department Manager. In addition, the following positions shall be excluded in marketplace stores; Home Manager, Assistant Home Manager, Relief Assistant Home Manager and three (3) Home Department Heads.
- (b) Whenever the Employer opens a store within one of the bargaining units as described in the preamble above, the Employer shall recognize the Union as the sole collective bargaining representative for any store which the Union demonstrates majority status via a card check.
- (c) The Union shall have jurisdiction over all meats that are cut or prepared for immediate human consumption on premises, including package items, fresh, frozen and smoked meats, fresh or frozen fish, poultry, and rabbits displayed in the Meat Department.
- (d) <u>Meat Department Only</u>: Except as provided in this Agreement, none other than the employees covered under the terms of this Agreement will be allowed to use any of the Meat Department tools of the trade or perform any other work in the Meat Department

that is covered by the terms of this Agreement. Meat Department Managers may, at the Employer's option, continue to perform their normal duties. Field Meat Supervisors will not be permitted to use the tools of the trade in the Meat Department except in cases of emergency, training, new store openings and remodelings.

At the Employer's discretion, any bargaining unit personnel may perform meat clean up duties anywhere in the Meat Department except that meat cutting and grinding equipment shall be disassembled and reassembled only by qualified employees.

Bargaining Note: It is understood and agreed that this provision shall not alter any established past practice between the parties.

In the event the Employer changes its operation in the Meat Department of its Retail Stores to that of a self-service operation, with cutting being done on a centralized basis and thereby causes the displacement from the Retail Store of a worker falling within the classification of this Agreement, then in that event, such displaced workers shall, if qualified, be allowed to displace All Purpose Clerks pursuant to the layoff provisions of this Agreement.

- (e) Deli Vendors may stock their own merchandise presently handled as a Meat Department item in connection with new store openings, remodels and major revamps and/or major re-merchandising. In addition, Deli Vendors may stock their own merchandise in accordance with the Employer's historical past practices.
- (f) The Employer will provide the Union, in writing, as soon as possible within thirty (30) days from the date of employment, a list of all newly hired employees showing:
  - Full name
  - Date of hire
  - Store assignment
  - Classification
  - Rate of pay
  - Current home address
  - Social Security number
- (g) For purposes of this Agreement, where the term "date of hire" is used for purposes of determining wage and benefit provisions of the Agreement, such date of hire shall be the employee's hire date with the Kroger family of companies, provided there has been no break in service with the same. Any employee who transfers from another of the Kroger family of companies shall not be considered to have had a break in service provided his or her transfer occurs within thirty (30) days of his or her last date worked in the company he or she is transferring from. It is understood and agreed that the Employer shall review its payroll records and adjust any hire dates impacted by this provision to the correct hire date as provided herein with the understanding that any improvements in an employee's terms and conditions of employment that result from such change shall be on a prospective basis only and the Employer shall not be liable to make any retroactive adjustments to employees affected by this provision. It is further understood that for purposes of assignment to the wage schedules in Appendix A, no employee

shall be reclassified to a closed wage schedule as the result of a change in his or her hire date.

#### ARTICLE 2 – UNION STORE CARD

The Union Store Card or Decal is the sole property of the United Food and Commercial Workers International Union, Local No. 99, and is loaned to the Employer, for display, who signs and abides by the Agreement. Only one such card, unless otherwise mutually agreed upon by the parties, shall be displayed in a place in the store visible to the public which is mutually agreed upon between the parties. One additional Union Shop Card/or Decal may be displayed in the Meat Department under the window of the cutting room door that leads to the sales floor. This Card or Decal may be removed by an authorized representative of UFCW Local No. 99 for any violation of this Agreement.

## ARTICLE 3 – DISCIPLINE OF AND DISCRIMINATION AGAINST EMPLOYEES

No employee shall be disciplined or discharged without just cause. An employee who is past their probationary period (first 90 calendar days of employment) who fails to report as scheduled and fails within twenty-four (24) hours thereafter to personally contact the store manager as provided herein shall for the first such absence be subject to a 60% disciplinary suspension and for two or more such absences be subject to immediate discharge, except that an employee whose disciplinary record for attendance related issues is such that the next step in discipline would have been termination shall be subject to immediate discharge on the first such absence.

The Employer shall not discriminate against an employee for upholding the terms of this Agreement, participation in legitimate Union activities, serving on a committee of the Union or any organization affiliated therewith, or failing or refusing to purchase stocks, bonds, securities or interest in partnership, corporation and/or company.

An employee must call in, if at all possible, at least two (2) hours prior to the scheduled starting time of his or her shift if such employee will be absent that day.

24 Hour No Call – No Show – Any employee who fails to report for work as scheduled and fails within twenty-four (24) hours thereafter to personally provide store management with sufficient reason to have prevented the employee from reporting to work shall be considered a voluntary quit. Notwithstanding the foregoing, in the event that an employee fails to report for work as scheduled or contact store management within twenty-four (24) hours thereafter, as required above, as a result of serious mitigating circumstances beyond his/her control, such employee shall be granted an additional twenty-four (24) hours to present the Employer with valid documentation or other persuasive evidence acceptable to the Employer confirming the employee's inability to report for work as scheduled or personally contact store management within the time limits set forth above. An employee satisfying these criteria shall have his/her voluntary termination vacated, with the involved time period considered an excused absence. Any dispute arising out of the application of this Article shall be subject to the Agreement's grievance and arbitration procedure.

The Employer and the Union agree that each will fully comply with applicable laws and regulations regarding discrimination against any employee or applicant for employment because of such person's race, religion, color, national origin, gender, disability, or age.

Whenever the masculine gender is used in this Agreement, it shall be deemed to include the feminine gender as well.

No employee will be subject to sexual harassment. Sexual harassment is defined to include: Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when such conduct is made explicitly or implicitly a term or condition of employment, is used as a basis for employment decisions, or has the purpose or effect of interfering with work performance or creating an otherwise offensive working environment.

Employees, past their probationary period, who are discharged for failure to perform work as required shall first have been warned, in writing, of a similar or related offense with a copy given to the employee.

An employee who is subject to disciplinary action will be required to sign the disciplinary notice. In signing the disciplinary notice, the employee is acknowledging only that he or she has received a copy of the disciplinary action and does not imply by signature that they necessarily agree to the action. Written Warning notices shall be issued no later than one (1) week from the date of the incident or one (1) week from the date management has knowledge of the incident, unless a delay is necessitated by circumstances beyond the control of management such as absence by employee, key witnesses or the result of a complex investigation of the circumstances giving rise to disciplinary incident.

In the event an employee should file a grievance regarding the merit of a written warning, the Union shall be supplied a copy of the warning upon written request.

Written notices shall be voided after a period of time not to exceed one (1) year unless another warning notice on a related or similar offense occurs within the one (1) year period, in which event all warning notices shall be retained until a one (1) year period without a warning notice on the matter has occurred.

A warning notice shall not be required in the case of a discharge for cash register irregularities.

The first ninety (90) calendar days of a new employee's employment 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.

An employee shall be notified by the Employer at the time of suspension or discharge of the reason for such action. Suspension notices will be given to the employee, in writing, at the time of the suspension. Written discharge notices stating the reason for discharge must be mailed to the discharged employee's last address on record with the Employer within fifteen (15) days of his or her discharge, unless such written notice is handed to the discharged employee at the time of discharge.

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

#### ARTICLE 4 – JOB POSTING/ CAREER ADVANCEMENT

The Employer recognizes the desire on the part of many of its employees to make careers within the retail food industry. Moreover, it is the Employer's policy to employ, promote and

transfer employees based on qualifications, merit and ability in order to effectively utilize its human resources. Therefore, the Employer hereby agrees to continue in place and refine as it deems appropriate, its job posting/career advancement policies and procedures providing a mechanism for qualified employees to avail themselves of promotion opportunities within the Company. The Employer agrees to work with the Union with the objective of developing procedures consistent with the Employer's policies on nondiscriminatory promotional opportunities. Notwithstanding, the Union expressly agrees that should the parties fail to reach mutual agreement with respect to the involved issues, the Union shall not seek recourse through the grievance or arbitration provisions of the Agreement nor shall the Union file any unfair labor practice charge(s).

#### ARTICLE 5 – SENIORITY

(a) Effective November 11, 2012, seniority for employees is defined as the length of continuous employment with the Employer within their classification. The seniority date in the system on November 11, 2012 shall be the recognized seniority date for all employees, except employees of the marketplace stores whose seniority date will be the seniority date reflected in the fry's payroll system on the date of this agreement's ratification (October 31, 2014). Seniority shall be applied as provided herein for the purposes of layoff, recall, vacation scheduling, scheduling of hours, promotions from part-time to full-time, reduction from full-time to part-time and reduction of hours. Maricopa County/Phoenix Metro; Pima County/Tucson Metro; Pinal County, Prescott area; Flagstaff; Cottonwood; Yuma; Globe; and Sierra Vista each are separate bargaining units. No employee shall suffer loss of seniority by reason of an approved leave of absence. An employee who transfers from one bargaining unit to another within their classification shall retain their seniority date. However, such employee shall not be considered to have seniority in the new location until the first schedule to be selected after the transfer date.

Seniority shall be maintained separately for classifications as follows:

- (1) All Purpose Clerks
- (2) Meat Cutters
- (3) Courtesy Clerks

Seniority can only be lost or broken by the following:

- (1) Quit.
- (2) Discharge for just cause.
- (3) Layoff for a period of time equivalent to the employee's seniority, but in no event to exceed six (6) months (except for Yuma, which shall not exceed nine (9) months).
- (4) Failure to return in accordance with the terms of a leave of absence.
- (5) Failure to return, within the time limits specified herein, when recalled after a layoff.
- (6) 24 Hour No Call No Show

In the event an employee is transferred, within the Company, out of the bargaining unit for any reason and is later transferred back, the employee shall retain seniority previously acquired by employment with the same Employer under this Collective Bargaining Agreement.

Seniority lists will be supplied electronically in the Excel format (or any mutually acceptable format.)

(b) <u>Layoffs and Recalls:</u> Layoffs and recalls shall be based on the employee's seniority with the Employer within the Employer's established bargaining units as defined in this Article. Hourly bargaining unit management employees shall not be bumped by non-management employees.

In the event a store needs to lay off an employee, as opposed to a reduction in hours, the least senior employee in the affected job will be laid off but, if qualified, shall be given the option of displacing the least senior employee in the store (who shall be laid off unless such employees has one or more years of seniority in which case such employee shall be allowed to displace the least senior employee in the geographic area or bargaining unit, if qualified) or of accepting the layoff.

Any employee who has been laid-off shall have their name placed on a preferential recall list for employment within their department and classification within the geographic area or bargaining unit. Such employee shall be obligated to accept the offer of employment when tendered or be removed from the preferential recall list. An employee who is removed from the preferential recall list will then be recalled under the regular terms as described in this Article.

The Employer shall recall employees on layoff to the store from which they were laid off prior to hiring a new employee. Any employee recalled shall be required to report within seventy-two (72) hours after telephone notice or delivery or attempted delivery of notice by certified mail to the employee's last address on record. In the event of employee's failure to notify the Employer of his availability for work as provided herein, or in the event of failure to report as required herein after receipt of proper notice, the employee shall be considered as having terminated service with the Employer. Copies of recall notices will be simultaneously mailed to the Union. An employee being recalled from layoff shall not be required to complete another application for employment.

The most senior full-time employee who has been reduced to part-time employment shall be offered the first full-time position that opens in the employee's store and classification, if qualified. If a part-time employee achieves full-time status within the store as provided herein where a more senior previously classified full-time employee in that store has been reduced to part-time status, the most senior employee within that store, department and classification shall be entitled to the full-time position achieved as provided herein, if qualified.

Recognizing that changes in operations, conditions, etc., may occur during the life of this Agreement, the Employer and the Union agree, that if mutually agreed, the parties may meet and, if appropriate, discuss or alter seniority to better suit the needs of the parties. Any agreement reached must be reduced to writing and signed by the appropriate parties before it could be placed in effect.

Current store seniority lists shall be maintained and made available in each store to employees of the store and the Union Business Representatives upon request. Upon request by the Union, the Employer agrees to within thirty (30) calendar days provide a seniority list of the employees covered by this Agreement, provided such requests are not made more than twice in each six (6) month period. The seniority lists shall be subject to challenge for fifteen (15) calendar days following submission to the Union.

(c) <u>Work Schedules and Hours</u>: Management shall determine the number of hours, and start times of each shift, to be worked within each job, department, classification and store. Except for Courtesy Clerks and those employees under the age of 18 years, daily scheduled shifts shall not be less than four (4) hours or more than eight (8) hours, at straight time except as provided in this Article.

Not later than ten (10) days prior to the start of any workweek, management shall post a list of shifts for each job within a department. Non-management employees who are not in designated specialized jobs shall be allowed to select their schedule, in seniority order, from the posted list of shifts for which they are qualified to perform within their department. Courtesy Clerks, who are students or who voluntarily restrict their availability, may be scheduled at management's discretion. Full-time employees shall select first, followed by part-time employees.

No employee shall be allowed to select a schedule that will result in overtime or other penalty provisions, unless expressly authorized by management, except employees may be allowed to select any number and/or combination of shifts, including back-to-back shifts or split shifts, provided that such employee does not select more than...

- (1) Forty (40) hours per week, or
- (2) Six (6) days in a week, or
- (3) Ten (10) shifts in the week, or
- (4) Ten (10) hours in any calendar day

...in such event no daily overtime or other penalty provision shall apply.

The Employee's selection shall be recorded on a master work schedule. Employees shall not be permitted to select a portion of a shift. Prior to the start of the selection process, management shall identify approved vacations and/or floating holiday requests on the schedule.

Management may allow employees of one department to select shifts in another department, if qualified, by seniority but only after all employees in that other department have selected their shifts. Management also retains the right to schedule a shift, which requires work in more than one job assignment, provided that such combination shifts contain work within the designated work groups as follows:

- (1) Group A Deli, Meat, Specialty Meat/Seafood, Produce, Bakery, etc.
- (2) Group B Front-end, Grocery, GM/HBA, HOME

In these events, the employee must be qualified as defined herein, to perform the work of the other or combined job assignments. Nothing herein should be construed to prevent management from using any scheduled employee to perform any work within the store during their scheduled shift. The parties agree not to change the groupings defined herein without mutual agreement.

Employees must immediately make their shift selections at the time directed by management. If an employee fails to promptly select, management shall select on behalf of the employee honoring their usual preference. In this event, the employee waives all rights to grieve management's scheduling selection. It is understood that all special requests for time off, other than floating holidays and vacations, must be selected by the employee during the scheduling process. Management shall have no obligation to accommodate any such request that cannot be scheduled by the employee in the selection process.

Unless otherwise approved, or as the result of a reduction in hours, no full-time employee shall select less than forty (40) hours and no part-time employee shall select less than twenty (20) hours per week, except as provided elsewhere in this Article. In the event employees are required to stay past their scheduled time, the Employer will advise of such in advance as soon as possible.

Management may require less senior employees to select a specific number of shifts so as to facilitate the selection of all shifts from the list. In the event an employee with one (1) or more years of seniority is left with less than minimum hours, management may elect to pull hours, in reverse seniority order, from senior employees with more than one (1) year of seniority within the classification and department to maintain the bottom twenty percent (20%) (or one (1) employee whichever is greater) at minimum weekly hours, or management may elect to lay off such employee and assign any remaining hours in seniority order to senior employees. The Employer may work part-time employees who so limit their availability such that, consistent with the Employer's business needs, the employee cannot select twenty (20) hours per workweek, less than the minimum hours required herein. No employee shall be allowed to select or be scheduled to work hours that will result in a violation of Federal or Arizona labor laws.

An employee electing to displace pursuant to the layoff procedure in Section (b) shall assume the selected schedule of the employee he is bumping until he is able to select for the next workweek.

The master schedule must be completed and posted by noon on Thursday prior to the start of the next workweek. The work schedule may not be changed except in cases of an absence of an employee or an emergency beyond the control of the Employer. The work schedule shall be written in ink and shall set forth the first and last names of the employees in order of seniority. Nothing in this section should be construed as preventing management from calling in employees for extra work outside of the posted schedule, from requiring overtime work outside of the posted schedule, or from bringing in additional employees where it appears advisable in the opinion of management. If the schedule is changed, after the selection process but before the posting of the schedule, and hours are reduced or increased, then the master schedule shall be rebid downward from the point of the schedule change. If hours are added after the Thursday noon posting of the schedule, such hours shall be assigned as provided in the Additional Hours section of this Agreement.

Additional Hours. Management shall post a weekly additional hours request list. Employees interested in working additional hours must sign and designate the days they are interested in working additional hours on such list by midnight of the Saturday prior to the start of the applicable workweek. When additional hours become available, management shall contact, in seniority order, employees who have requested to work on the day indicated on the request list and offer them the hours, provided such employee is qualified to work the hours. If the hours cannot be assigned to the employees requesting them, management may fill the hours at its discretion. Nothing in this section shall be construed to require management to assign hours at overtime or to employees who have not made a request to work additional hours or to prevent management from holding over employees currently working in the store from one job assignment to another.

The Union and Employer agree to establish a committee comprised of two (2) persons from the Employer and two (2) persons selected by the Union to resolve disputes arising out of this section for one year from the date of ratification. This committee shall meet expeditiously and any dispute unresolved will be arbitrated in an expedited manner.

<u>Full-time Employees</u>: A full-time employee is defined as one who is hired or advanced by the Employer to full-time status or who is scheduled to work or provided at least forty (40) hours per week and is guaranteed a minimum of five (5) eight (8) hour days' work in that week (such work days need not be consecutive), unless such employee is unable to select a forty (40) hour schedule, when said employee works as scheduled. The schedule may include Sundays and/or holidays. The Employer may schedule or provide (full-time employees only) four (4) ten (10) hour shifts, and overtime shall be paid for work over ten (10) hours a day.

Any part-time employee who has worked in his or her home store for forty (40) hours per week for twelve (12) consecutive weeks will be classified as a full-time employee. A specific individual's work in temporary vacancies to cover vacation, illness, injury or leave of absence shall not count toward the aforementioned twelve (12) consecutive weeks. It is understood that weeks in which the employee is on vacation, or holiday weeks, shall be skipped over for purposes of determining whether an employee has worked twelve (12) consecutive weeks at forty (40) hours.

Each store shall maintain its own standing list of part-time APC's of that store that wish to be considered for full-time openings that occur within that store. The part-time APC shall designate the department they wish to be considered for full-time. A part-time APC with ten (10) or more years of service who is working in a store that has not had a full-time opening in the trailing six (6) month period shall be allowed to put their name on the full-time list for their district for consideration for a full-time opening that may occur in their district outside their home store. The part-time APC signing the district list shall designate the store(s) in the district and departments they wish to be considered for full-time. When a full-time APC opening occurs within a store (excluding twelve (12) weeks at forty (40) openings), the Employer shall first review the store and district's full-time list and the Employer agrees to advance the most senior APC on the combined lists to the full-time job assignment, provided such employee is qualified to perform the work required by the job opening before the Employer hires a full-time APC, or advances a part-time employee to full-time from another store. Any part-time employee who signs a

full-time list and refuses a full-time assignment shall have their name removed from the list and shall be ineligible to resign the list for a period of six (6) months.

A full-time employee may be directed to select six (6) days in any workweek. In that event and in addition to the scheduled five (5) eight (8) hour days, he shall be guaranteed a minimum of four (4) hour's work for such sixth (6th) day. The four (4) hour day need not be the actual sixth (6th) day of work but may be any one (1) of the six (6) days in the weekly work schedule.

<u>Part-time Employees</u>: A part-time employee is defined as one who is scheduled to work less than forty (40) hours per week and is guaranteed at least four (4) hours per day when said employee works as scheduled.

<u>Departments</u>: For all purposes of this Agreement where the word department is used, it shall be defined as the departments established by the Employer. The Employer agrees to identify in writing the departments in existence in its stores and further agrees to notify the Union in writing prior to the implementation of a new department or elimination of an existing department. The Employer also agrees to discuss the departmental change prior to implementation, but retains the right to establish or eliminate departments in the store provided that those changes do not circumvent the basic A and B groupings of this Article.

- (d) <u>Qualifications</u>: To be considered qualified for jobs as provided herein:
  - (1) For shifts involving stocking, non set up produce, customer service, fuel center, maintenance, video, photo, liquor, or checking, the employee must have been trained for such work and have successfully performed the work.
  - (2) For shifts involving bakery, produce set up, deli, meat wrapping and specialty meat/seafood, the employee must have been trained for and worked in the job assignment for a minimum of one hundred twenty (120) hours in the last nine (9) months.
  - (3) Management retains the right to determine qualifications and to assign employees to job assignments involving ordering, produce set up, nutrition and all pharmacy technicians, cake decorator, floral, bookkeeper, store secretary, baker, receiving, specially accommodated employees, scan coordinator and apparel APCs. It is understood that such work and schedules are assigned at management's discretion and cannot be claimed during scheduling selection or through additional hours by anyone outside those assignments. When more than one employee is equally qualified to perform such a job, such employees shall select shifts by seniority. For purposes of this agreement, specially accommodated employees shall be those employees whose physical or mental condition renders them unable to perform the essential functions of a job.
- (e) <u>Training</u>: Management retains the right to train employees for positions at its discretion. Notwithstanding, management agrees to allow non-management employees 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 to check or stock during each six (6) month period referenced above.

Management will train at least one (1) employee by seniority within each store from the voluntary list for each of the following positions: produce, bakery, deli, meat wrapper, fuel, and specialty meat/seafood per year, equally distributed between the two (2) annual training periods.

Management retains the right to determine at its discretion, without regard to seniority, those employees it will allow to volunteer for training for specialized positions in the store.

This provision shall not apply to a store that currently has laid-off employees.

Training hours, as designated by management whether voluntary or not, shall not be subject to selection of shifts by employees. Nothing herein prevents the Employer from assigning employees to training based on store or company needs.

- (f) <u>Department Bidding</u>: Employees shall be allowed to bid to another department by seniority when a vacancy occurs within their store, except for the specialized jobs provided herein and provided such employee is of the same status (full-time/part-time) required by the vacancy. 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. Produce set up clerks, all pharmacy technicians, floral clerks, nutrition, cake decorator, bakers, ordering clerks, receiving clerks, store secretaries, bookkeepers and scan coordinators may not bid out of their department unless approved by management.
- (g) <u>Reduction in Hours: Full-Time Employees:</u> No full-time employee classified as a Journeyman Meat Cutter, Head Meat Cutter, Apprentice Meat Cutter or full-time Wrapper/Counter Person on or before May 6, 1992, (December 31, 1992, for former Smith's and Smitty's employees, November 8, 1992, for Pinal County Fry's) shall be laid off (severed from employment) or have his/her hours reduced as a direct result of the Employer using All Purpose Clerks to perform cutting, processing or stocking of meat.

Management shall not write a schedule of shifts that would result in a full-time employee being unable to select a forty (40) hour schedule (thirty-two (32) hours in a holiday week) unless the average scheduled hours (including hours scheduled and paid for vacation, unworked holiday, jury, sick, and funeral pay) of all part-time employees within the classification and department within the store is twenty-four (24) hours or less for the involved workweek. If such individual's temporary reduction to part-time exceeds two (2) consecutive weeks or more than four (4) weeks in a rolling twelve (12) month period, then such reduced employee shall have the right to exercise their seniority in the bargaining unit as outlined in Article 5(h) – Full-Time Employees –

Competitive Openings." Full-time employees with ten (10) or more years of service shall be allowed to bump pursuant to this paragraph in the first week of reduction.

- (h) <u>Full-Time Employees Competitive Openings:</u> Notwithstanding anything found in other parts of this Agreement, during the first sixty (60) days following a competitive opening, management may elect, in lieu of reducing hours as provided above, to lay off full-time employees to maintain the same proportion of full-time employees to part-time employees the store averaged in the month prior to the competitive opening. In the event of a layoff, the displaced employee shall be given the following options:
  - Displace the least senior full-time employee in the geographic bargaining unit.
  - Step-down to part-time and displace the least senior part-time employee within their classification and store.

Employees displaced by the full-time reduction under this procedure shall be given their layoff options pursuant to the layoff language of this Agreement.

(i) Seniority lists will be supplied electronically in the Excel format (or any mutually acceptable format).

## ARTICLE 6 – WORKING RULES AND OVERTIME

<u>Workday, Workweek and Meal Period</u>: The basic workweek shall be five (5) eight (8) hour days to be worked within eight and one-half  $(8\frac{1}{2})$  or nine (9) consecutive hours for full-time employees. All employees who work more than six (6) consecutive hours in a workday shall receive not less than one-half  $(\frac{1}{2})$  hour nor more than one (1) hour continuous and uninterrupted time off for a meal period. Arrangements for less than one (1) hour meal periods shall be made by mutual agreement between the employee and the Employer. Said meal period will not be scheduled before the employee has worked three (3) hours, and no employee will be required to work more than five (5) hours prior to the beginning of the scheduled meal period.

The basic workweek shall be five (5) eight (8) hour days for full-time employees, Sunday through Saturday. The basic workdays in any case need not necessarily be consecutive.

<u>Overtime</u>: All work performed in excess of eight (8) hours in any one (1) workday will be paid at time and one half  $(1\frac{1}{2})$ . Time and one half  $(1\frac{1}{2})$  will be paid for hours worked in excess of ten (10) hours when an employee selects more than one (1) shift totaling ten (10) hours in any one (1) workday. Hours worked in excess of forty (40) hours in a basic workweek shall be deemed overtime and paid for at the overtime rate of time and one-half  $(1\frac{1}{2})$  the employee's regular base rate of pay. There shall be no pyramiding of overtime and/or premium time.

<u>Holiday Week</u>: All time worked over thirty-two (32) hours, exclusive of the holiday in the basic holiday week, shall be paid for at the rate of time and one-half  $(1\frac{1}{2})$  the employee's regular rate of pay.

<u>Transfers</u>: Employees shall be allowed to request a transfer to a store by filling out a written request on a company provided form. The Employer will give consideration to all such requests and will not unreasonably deny such requests. If the request is denied, the Employer will notify the employee of the reasons for not approving such requests. Except for transfers involving a

lay off pursuant to Article 5, a permanent reassignment by the Employer which requires the employee to travel twenty (20) miles or more one (1) way from home, may be refused by the employee. An employee exercising this right of refusal must do so at the time of notification of reassignment and such refusal shall not jeopardize the employee's position with the Employer in any way.

<u>Interruption of Operations</u>: In the event operations cannot commence or continue when so recommended by Civil authorities; or Public Utilities fail to supply electricity, water or gas; or there is a failure in the Public Utilities' sewer system; or the interruption of work is caused by an Act of God or other cause not within the Employer's control, the foregoing guarantees shall not be applicable.

#### ARTICLE 7 – VACATIONS

<u>Full-Time Employees</u>: All full-time employees shall be granted a minimum of one (1) week vacation with forty (40) hours pay after one (1) year of continuous service with the Employer, provided that the employee has worked or has been paid for at least one thousand eight hundred forty (1,840) straight-time hours during the twelve (12) month period immediately preceding his anniversary date of employment.

All full-time employees shall be granted two (2) weeks vacation with eighty (80) hours pay after three (3) years of continuous service with the Employer, provided that the employee has worked or has been paid for at least one thousand eight hundred forty (1,840) straight-time hours during the twelve (12) month period immediately preceding his most recent anniversary date of employment.

All full-time employees shall be granted three (3) weeks vacation with one hundred twenty (120) hours pay after five (5) years of continuous service with the Employer, provided that the employee has worked or has been paid for at least one thousand eight hundred forty (1,840) straight-time hours during the twelve (12) month period immediately preceding his most recent anniversary date of employment.

All full-time employees shall be granted four (4) weeks vacation with one hundred sixty (160) hours pay after fifteen (15) years of continuous service with the Employer, provided that the employee has worked or has been paid for at least one thousand eight hundred forty (1,840) straight-time hours during the twelve (12) month period immediately preceding his most recent anniversary date of employment.

All full-time employees shall be granted five (5) weeks vacation with two hundred (200) hours pay after twenty (20) years of continuous service with the Employer, provided that the employee has worked or has been paid for at least one thousand eight hundred forty (1,840) straight-time hours during the twelve (12) month period immediately preceding his most recent anniversary date of employment.

Such full-time employees working less than one thousand eight hundred forty (1,840) hours, but more than one thousand forty (1,040) hours in the twelve (12) month period immediately preceding their anniversary date of employment shall receive pro rata vacation pay and pro rata time off for vacation. Such pro rata time off and pay shall be based on the number of weeks vacation to which the employee is entitled based on the formula set forth above.

Part-time employees who have worked or been paid for one thousand forty (1,040) hours during the year immediately preceding their anniversary date of employment, shall be entitled to vacation pay on each anniversary date of their employment, prorated on the basis of the average number of straight-time hours worked during the preceding year, according to the vacation formula set forth.

All regular full-time employees and all part-time employees who are hired on or after June 20, 2004, covered by this Agreement, shall receive one (1) week paid vacation after one (1) year service, two (2) weeks paid vacation after four (4) years service, three (3) weeks paid vacation after eight (8) years continuous service and four (4) weeks paid vacation after fifteen (15) years continuous service.

Hours paid for each week of vacation shall be based on the average straight-time hours worked per week in the preceding anniversary year not to exceed forty (40) hours except for those employees previously receiving more favorable vacation pay.

<u>Vacation Periods</u>: Vacations shall be granted on a seniority basis by store and classification during the Employer's established vacation period which will be January 1 through December 31.

<u>Daily Vacation</u>: Employees with three (3) or more weeks of annual vacation shall be permitted to take one (1) week of accrued vacation on a single day basis. Single days of vacation shall be paid in the week the day is taken and cannot be paid in advance. Eligible employees who elect this option must notify store management during the January/February vacation selection period. A single day of vacation must be approved and scheduled by the store manager or department head. Single days not taken by the employee by the eleventh month of their anniversary year, may be assigned by management. Single vacation days will count as hours worked in the same manner as paid hours for a holiday not worked.

<u>Vacation Selection</u>: Vacations shall be scheduled on the basis of seniority preference whenever possible considering the efficient operation of the store. Each employee will make his/her vacation selection during the established company vacation period but in no event shall the selection take place later than February 28 in each store. Each employee shall be notified through posting of the employee requested vacation period, but in no event shall the notice be later than four (4) weeks after the selection period (provided that there are four (4) weeks) or more between the time of the request and the vacation period requested.

Employees, who do not select vacation schedules during the selection period and those employees whose vacation selection is denied, will be required to select their vacation from remaining available periods based upon individual seniority and the needs of the business. In no event shall this selection period under any circumstances exceed April 15.

If an employee's vacation period is not filled after completing the above process, the employee will be assigned a vacation period by the Employer.

Once assigned, an employee's vacation period will not be changed except for legitimate business purposes. In scheduling an unselected or assigned vacation of an employee, the Employer shall give at least thirty (30) days notice prior to the date of the beginning of the vacation.

<u>Prorated Vacations</u>: Prorated vacations will be paid to employees who terminate after completion of one (1) year or more of continuous employment unless the employee is discharged for just cause.

<u>Holiday During Vacation</u>: If a holiday named under Article 18 of this Agreement falls within the vacation period of an employee, he shall be granted an additional day of vacation with full pay, or a day's pay in lieu thereof.

<u>Payment Date</u>: Vacation pay shall be requested in writing by the employee at least three (3) weeks in advance of the vacation, and will be paid by the payday prior to the start of the vacation (provided timely requested and the employee is otherwise eligible).

<u>FMLA</u>: The Employer may payout all but one week of accumulated vacation pay for employees on FLMA.

<u>No Waiver of Vacation</u>: A vacation may not be waived by an eligible employee and extra pay received for work during that period unless agreed by the Employer and the Union. Vacations must be taken during each employee's anniversary year. Vacations shall not be accumulative from one year to another.

## ARTICLE 8 – WAGES

<u>Wage Rates</u>: The following schedule of minimum hourly wage rates shall be maintained and paid by the Employer. See Appendix A attached.

The experience and length of service wage adjustments provided for under Appendix A shall be placed into effect the first (1st) workday of the first (1st) workweek immediately following the workweek in which the employee qualifies for a higher rate of pay.

<u>Night Premium</u>: All Purpose Clerks and Meat Cutters shall receive a premium of fifty cents (\$0.50) per hour (twenty-five cents (\$0.25) per hour for Courtesy Clerks and for all employees hired on or after June 20, 2004). Such premium shall apply to all work performed by employees after 12:00 midnight and before 5:00 a.m. over and above the regular hourly rate of pay and/or overtime rate to which the employee may be entitled.

<u>Sunday Premium</u>: Employees hired prior to November 13, 1986, excluding Courtesy Clerks, who work on Sunday shall be paid, one and one-half (1½) times for all hours worked except:

- (a) Courtesy Clerks hired prior to June 20, 2004, shall be paid a premium of fifty cents (\$0.50) per hour.
- (b) All Purpose Clerks hired after November 13, 1986, but before June 20, 2004, shall be paid a premium of fifty cents (\$0.50) per hour. Those employees, who were in a classification eligible for Sunday premium pay at one and one-half (1½) times their regular rate under the previous contract, will progress to that one and one-half (1½) times premium after working three thousand nine hundred (3,900) hours including all hours worked except Courtesy Clerk hours. Any employee receiving one and one-half (1½) Sunday premium under the previous contract will continue to receive such premium.

- (c) Employees hired on or after June 20, 2004, shall not be eligible for Sunday Premium.
- (d) Effective the first workweek in June 2006, the Employer may assign up to 80% of the hours worked on Sunday to employees hired on or after June 20, 2004. Notwithstanding, the Employer may assign hours at levels greater than these percentages if employees hired prior to June 20, 2004, decline to work such hours. Nothing in this provision should be construed to prevent the Employer from denying employees hired prior to June 20, 2004, the right to select Sunday hours in accordance with their qualifications and seniority as provided in Article 5.

<u>No Reduction In Rates</u>: It is further agreed that no employee shall suffer any reduction in hourly rates by reason of signing of this Agreement. No employee receiving hourly rates in excess of the rates herein shall be replaced by another employee at a lesser hourly rate for the purpose of avoiding any of the provisions of this Agreement.

Special rates of pay may be arranged for superannuated employees by mutual agreement between the Employer, the Union, and the involved employee.

<u>Rest Breaks</u>: All employees working an eight (8) hour shift or longer shall receive an uninterrupted, unscheduled ten (10) minute break approximately near the middle of the first half of the work shift (prior to the meal period) and an uninterrupted, unscheduled ten (10) minute break approximately near the middle of the second half of the work shift. An employee working a shift of six (6) to eight (8) hours shall receive an uninterrupted, unscheduled fifteen (15) minute break approximately near the middle of the work shift. An employee working less than a six (6) hour shift shall receive an uninterrupted, unscheduled ten (10) minute break approximately near the middle of the work shift. An employee working less than a six (6) hour shift shall receive an uninterrupted, unscheduled ten (10) minute break approximately near the middle of the work shift. Employees receiving more favorable rest periods shall not have such rest period time reduced as a result of the signing of this Agreement.

Bonus Payments: Bonuses or prize money shall not be considered as part of an employee's regular wage.

<u>Section Heads and Bonus Plans:</u> The Employer retains all rights with respect to establishing, qualifying and paying incentive bonuses to department managers and others and any such bonus plans for all purposes shall be outside the scope of the Agreement.

## ARTICLE 9 – CLASSIFICATIONS

<u>Previous Experience</u>: Previous experience in the industry (defined for stocking, checking and/or bagging as experience gained at any comparable supermarket) shall apply in the classifications irrespective of where such experience may have been gained; however, experience in convenience stores, non-food retail and self-employment shall not be considered. Prior experience shall be defined as previous, provable, comparable work experience within the past five (5) years from the date of present employment and shall be the basis for determination of an employee's rate of pay. Employees not having worked in the industry within the immediate five (5) years previous to the present employment shall be placed in the prevailing pay scale mutually agreeable with the Employer, the employee, and the Union. An applicant claiming prior experience must list such actual experience on his application and, based on this information, the Employer may justifiably place the applicant, if hired, in the proper wage

classification. Employees whose prior experience was not with the Employer will start one step below the proper wage classification. Wage placement will be only in full increments and employees must complete the full required hours in each remaining step.

<u>All Purpose Clerks</u>: Are employees who may be assigned to any work covered by this Agreement.

<u>Department Store Section Heads</u>: The number of Section Heads may vary by store according to site and sales, some departments may be combined or may not be represented in all stores; however, the Employer agrees that there shall be no more than eight (8) Section Heads per store.

This position shall be a full-time forty (40) hour per week five (5) eight (8) hour days position and the selection of the Section Heads shall be at the sole discretion of the Employer, provided such selections are not for arbitrary or capricious reasons.

<u>Meat Cutters</u>: Are employees whose primary responsibility is to cut, process and stock fresh meat for sale to the public. The Employer reserves the right to assign Meat Cutters to perform any duties within the store. The Employer agrees, except in the case of a store closing, not to lay off any employee who was classified as a Meat Cutter on June 19, 2004, so long as All Purpose Clerks are scheduled to work in the cutting, stocking and processing of meat. Full-time Meat Cutters hired prior to June 20, 2004, shall be scheduled or provided eight (8) hours per day and forty (40) hours per week before any All Purpose Clerks are scheduled to cut meat. In the event a Meat Cutter is scheduled at the same store concurrently with an All Purpose Clerk, the Employer agrees that the Meat Cutter shall be assigned any work involved in the cutting of meat, except meat cut at the service meat case, before such All Purpose Clerk is assigned to cut meat. The Employer further agrees to employ in the bargaining unit a minimum number of Meat Cutters equal to the number of supermarkets the Employer operated in the bargaining unit on June 19, 2004, or the actual number of supermarkets if such total is less.

Meat Cutters hired prior to June 20, 2004, and Meat Wrappers hired prior to May 7, 1992, shall be scheduled or provided eight (8) hours per day. All Meat Cutters hired prior to June 20, 2004 shall be classified as full-time.

<u>Courtesy Clerks</u>: The Employer may hire Courtesy Clerks. Such Courtesy Clerks shall be considered as a separate classification. Courtesy Clerks are those employed to perform duties except for the stocking of merchandise (including produce), operating cash registers or receiving merchandise. The prohibition of stocking work includes the handling of back room merchandise.

Courtesy Clerks may move back room and sales floor stock for cleaning purposes; return gobacks and misplaced items (orphans); perform in-store demonstrations; fill soda pop machine, ice box and water vending machines. Additionally, Courtesy Clerks (limited to two [2]) may face merchandise on the sales floor for a three (3) consecutive hour period (designated on each store schedule) between the hours of 6:00 a.m. and 10:00 p.m. daily.

Courtesy Clerks may perform incidental work related to customer service out of their classification at the Courtesy Clerks pay rate. In addition, Courtesy Clerks may perform the work of an All Purpose Clerk in an emergency, when an All Purpose Clerk who has been scheduled for work fails to report or when no All Purpose Clerk can be reached after attempting four (4) calls. A Courtesy Clerk who is advanced to an All Purpose Clerk position shall be paid the rate in the All Purpose Clerk scale based on their experience for all hours worked as an All

Purpose Clerk. In the event of a violation of this section resulting in a loss of hours to an All Purpose Clerk, then if such All Purpose clerk files a timely grievance, then the exclusive remedy shall be to allow such All Purpose Clerk to work the hours in violation. Such hours are above and beyond the posted schedule and must be worked within four (4) weeks of the date of violation giving rise to the grievance.

Except for reasons of business necessity, a Courtesy Clerk may only be transferred from their assigned store by their own request.

<u>Relief Clerks</u>: Whenever an employee is required by the Employer to change from one store to another during the same day, all time consumed by said employee in going either to or from one store to another shall be considered and paid for as part of the regular day's work. The Employer will also pay the employee for mileage, at the current IRS rate, if they use their own vehicle on any assignment by the Employer of more than ten (10) total miles.

<u>Pharmacy Technicians</u>: An All Purpose Clerk whose duties include: accepting written prescription orders, accepting refill information, typing and affixing labels, counting drug products, prepacking drug products, returning drug products to stock, assisting in the delivery of filled prescriptions to patients, preparing prescriptions for mailing, communicating with patients and health care professionals, reporting mishaps, maintaining supplies and handling cash.

Certified Pharmacy Technician: An All Purpose Clerk who is a Certified Pharmacy Technician. This designation shall be held by employees successfully completing the National Technician Certification Exam administered by the Arizona Pharmacy Technician Certification Board. Employees assigned by the Employer to the classification of Certified Pharmacy Technician shall be paid the appropriate All-Purpose Clerk straight-time hourly wage rate as defined in Appendix A - Wages. Certified Pharmacy Technicians successfully completing the probationary period provided for herein shall be eligible for reimbursement by the Employer for expenses associated with taking the National Technician Certification Exam or to maintain certification upon achieving such certification. Upon written request by the Certified Pharmacy Technician to his/her Pharmacy Manager and written verification of certification, the Employer shall reimburse a Certified Pharmacy Technician fifty percent (50%), up to \$75.00, of the cost for certification one hundred eighty (180) days following receipt by the Pharmacy Technician of such certification, provided such Certified Pharmacy Technician is at that time still employed by the Employer in the Certified Pharmacy Technician classification. Upon written request by the Certified Pharmacy Technician to his/her Pharmacy Manager and written verification of certification, the Employer shall reimburse a Certified Pharmacy Technician the remaining fifty percent (50%), up to \$75.00, of the cost for certification three hundred sixty-five (365) days following receipt by the Pharmacy Technician of such certification, provided such Certified Pharmacy Technician is at that time still employed by the Employer in the Certified Pharmacy Technician classification. Nothing contained herein shall prevent the Employer from utilizing employees as non-certified Pharmacy Clerks to perform Pharmacy Department duties not expressly reserved by statute to the classification of Pharmacist and/or Certified Pharmacy Technician. Other courses and fees required shall be reimbursed by the Employer when successfully completed.

<u>Pharmacy Clerk</u>: An All Purpose Clerk working under the supervision of a Pharmacist, trained to perform clerical duties associated with the practice of pharmacy, including cashiering, bookkeeping, pricing, stocking, delivering, answering nonprofessional telephone inquiries, and documenting third-party reimbursement. Support personnel shall not perform the tasks of a

Pharmacist, Pharmacy Intern, Graduate Intern, Pharmacy Technician, or Certified Pharmacy Technician.

## ARTICLE 10 – GENERAL CONDITIONS

<u>Cash Register Shortages:</u> No employee may be held responsible for cash register shortages, unless the employee is given the privilege of checking the change and daily receipts upon starting and completing the work shift, and has exclusive access to the cash register during the work shift, except when management exercises its right to open the register during the employee's work shift, and the register is opened in the presence of the employee and the employee is given the opportunity to verify all withdrawals and/or all deposits.

<u>Store Meetings</u>: Employees may be required to attend up to two (2) store meetings a year at their regular hourly rate for the actual time spent at the meeting. However, up to two (2) additional meetings may be held in a year for exceptional circumstances (e.g., introduction of new equipment) at the regular hourly rate, for the actual time spent at the meeting.

<u>Uniforms</u>: The Employer will provide "special apparel" not customarily worn as normal apparel such as vests, aprons, or caps designed to identify the wearer as an employee. Employees will be responsible to launder and maintain company issued apparel. This shall not be construed to include work attire (such as white shirts), which are required by the Employer, provided that no special insignias are required.

Special items required by the Employer (such as meat smocks and white aprons) shall be furnished, laundered if appropriate, and remain the property of the Employer.

<u>Charity</u>: Employee participation in charitable drives shall be voluntary.

<u>Polygraph Testing</u>: The Employer shall not require any employee to submit to or take a polygraph or electronic lie detector test or examination as a condition of continued employment.

<u>Union Postings</u>: The Employer shall provide space for the posting of official Union notices in a place normally accessible to employees. The Union will provide courtesy copies of official postings to the designated representative of the Employer.

<u>Safety</u>: No employee shall be subject to disciplinary action or discharge for refusing to use faulty equipment. Employees shall be required to use safety equipment provided by the Employer and any employee failing to use such safety equipment shall be subject to appropriate disciplinary action.

First Aid Equipment shall be kept on premises, readily accessible to employees.

Sharpening of tools shall be paid for by the Employer.

Food handling employees shall not be required to maintain restrooms. No employee shall litter or create unnecessary disorder.

Employees who are required by law or regulation to obtain or maintain a Health Certificate for work purposes must comply.

#### ARTICLE 11 – LEAVES OF ABSENCE

Employees with one or more years of continuous service may request a leave of absence of up to thirty (30) days duration for personal reasons. The Employer will consider such request, and the employee's justification on an individual basis, and will not unreasonably deny such leave.

Employees who have completed their probationary period shall be entitled to a leave of absence, without pay, up to the total length of service of the employee with the Employer, without loss of seniority, provided there is medical evidence that the employee is disabled as a direct result of illness, injury or pregnancy including industrial illness or injury not to exceed twelve (12) months. Both parties recognize that exceptional cases may occur where an extension of the leave of absence is necessary and warranted. In such situations the Employer may, at his option, extend a leave of absence, provided proper notification of the request for extension and need for such extension have been provided to the Employer prior to the lapse of the original leave.

Prior to being scheduled for work upon the termination of a leave of absence, the employee's physician must give written certification that the employee is fully released to perform all usual duties. If deemed appropriate, the Employer may require an examination by a doctor selected and paid for by the Employer. In the event of a disagreement between the two (2) doctors, the parties shall select a third (3rd) doctor.

When this requirement has been met, the employee will be scheduled for work in the first full workweek for which the work schedule has not been posted as provided in this Agreement following the receipt of the physician's release by the Employer's designated representative.

An employee who has taken a leave of absence or leaves of absence totaling six (6) months as provided above, upon returning to work, must again be continuously employed for at least six (6) months before qualifying for another leave of absence.

The parties shall not administer this Section in a manner which violates the Americans with Disabilities Act (ADA).

After one (1) year of continuous service, in case of serious illness, serious injury, or death of a member of the employee's immediate family, a leave of absence of up to thirty (30) days without pay will be granted upon written application to the Employer's designated representative. Reasonable evidence of qualifications for this type of leave of absence may be required by the Employer. Only one (1) such leave of absence will be granted an employee per cause in each anniversary year of employment.

For the purpose of this provision, a member of the immediate family shall be limited to: spouse, child, stepchild, mother, father, mother-in-law, father-in-law, stepparent, grandchildren and grandparent.

<u>Military Leave</u>: The Employer agrees to comply with the terms of the Uniformed Services Employment and Re-employment Rights Act (USERRA), with reference to all provisions, providing for re-employment of persons entering Military Service. These provisions shall be deemed a contractual obligation under the terms of this Agreement.

<u>Union Leave</u>: The Employer shall grant an unpaid Union leave of absence to employees. Such leave shall not exceed twelve (12) months, unless extended by mutual agreement between the

Employer and Union. Requests for such Union leave or extension(s) shall be made at least two (2) weeks in advance. The Union will provide the Employer at least two (2) weeks notice in writing of his intent to return. Should the employee's return require layoffs, the regular layoff provisions of the Collective Bargaining Agreement shall apply.

An employee must request, in writing, a leave of absence for any absence of more than two (2) calendar weeks.

For all leaves of absence, the employee shall not suffer a loss of seniority rights. The employee shall accrue seniority while on leave. The employee shall, upon returning to work, receive any wage increase or reduction that may have become effective during such absence and shall be returned to the geographical area where he was assigned at the time of commencement of the leave.

#### ARTICLE 12 – SICK LEAVE PAY

All employees hired and eligible for sick leave benefits on or before June 19, 2004, and coming under the jurisdiction of this Agreement who have been employed by the Employer for a period of one (1) year and have worked at least one thousand eight hundred twenty (1,820) hours during that year shall be entitled to six (6) days paid sick leave. Sick leave shall be cumulative for seven (7) years at the rate of six (6) days per year or one-half ( $\frac{1}{2}$ ) day per month, to a maximum of forty-two (42) days, until used.

All employees hired and eligible for sick leave benefits on or after June 20, 2004, and coming under the jurisdiction of this Agreement who have been employed by the Employer for a period of one (1) year and have worked at least one thousand eight hundred twenty (1,820) hours during that year shall be entitled to four (4) days paid sick leave. Sick leave shall be cumulative at the rate of four (4) days per year or one-third (1/3) day per month, to a maximum of twelve (12) days, until used.

<u>Part-time Employees</u>: Part-time employees hired before June 20, 2004, who have worked more than one thousand forty (1,040) hours during any anniversary year but less than one thousand eight hundred twenty (1,820) hours shall receive pro rata sick leave at the ratio of forty-eight (48) hours to two thousand eighty (2,080) times (.023). Part-time employees hired on or after June 20, 2004, who have worked more than one thousand forty (1,040) hours during any anniversary year but less than one thousand eight hundred twenty (1,820) hours shall receive pro rata sick leave at the ratio of thirty-two (32) hours to two thousand eighty (2,080) times (.015). Those employees who have worked less than one thousand forty (1,040) hours are not entitled to paid sick leave.

Sick leave may be applied beginning with the employee's second (2nd) full scheduled workday missed during a period of illness. There shall be no waiting period for sick pay benefits for any work missed due to an approved industrial accident or industrial injury. The number of days of sick leave applied during any week shall be based on the number of days the employee was scheduled to work during the week immediately preceding the illness. The Employer may require a doctor's certificate or other evidence satisfactory to the Employer as proof of illness prior to the payment of sick leave benefits. Sick leave benefits, as provided herein, may be used by the employee for either illness or accident.

Notwithstanding anything in this Article to the contrary, if an employee is hospitalized as a registered bed patient, on the first scheduled workday of disability, there shall be no waiting period.

Sick leave pay must be requested by an employee in writing. Sick and accident benefits shall be deemed payable only as above provided and shall not be convertible to cash.

Sick leave pay shall be integrated with the State of Arizona Industrial Compensation and the Trust Fund Disability Income so that the sum of the daily sick leave allowance hereunder and the aforesaid State Industrial Compensation and the Trust Fund Disability Income, exclusive of the daily hospital benefits which may be payable to an employee, shall not exceed one hundred percent (100%) of the employee's regular daily wage at straight-time. If the sick leave pay allowable to an employee hereunder when so combined with any such State Industrial Compensation daily benefits or Trust Fund Disability Income received by the employee exceeds one hundred percent (100%) of his regular daily rate at straight-time, for any one (1) day, then such sick leave pay for that day shall be reduced accordingly. Any portion of the sick leave pay allowance not received by reason of any such reduction shall be retained in the employee's sick leave pay account as a part of his accumulated sick leave pay credits.

# ARTICLE 13 – JURY DUTY

Employees shall become eligible for the following after completion of twelve (12) consecutive months of continuous employment with the Employer. When an employee is required to be in any court or courthouse for jury service and such service deprives such employee of pay that he otherwise would have earned, he shall be scheduled for a day shift on a Monday through Friday workweek and shall receive pay during such workweek for each day on jury service at the rate of eight (8) hours times his straight-time hourly rate, except in the case of part-time employees the number of hours regularly scheduled on the day in question, less any remuneration received by him for jury service.

If such employee, in addition, works for the Employer on Saturday, he shall be paid at the rate of straight-time. If he works for the Employer on Sunday, he shall be paid at the Sunday rate of pay.

If an employee is excused, temporarily or permanently, from jury service on any scheduled day, i.e., Monday through Friday, he shall immediately report for work to complete the remaining hours of his scheduled work shift. Failure to so report shall disqualify an employee for any pay for jury duty for the day in question as long as the transportation time will permit him to return to work prior to one (1) hour before the end of his shift.

The Employer may require proof of attendance for jury service. An employee making a false claim for jury duty pay shall be subject to discharge.

Jury duty pay shall not be required for grand jury.

#### ARTICLE 14 – FUNERAL LEAVE

Employees shall become eligible for the following after completion of twelve (12) consecutive months of continuous employment with the Employer.

Upon request, an employee covered by this Agreement shall be granted the necessary time off with pay at the employee's regular straight-time rate of pay in order to make arrangements for and/or attend the funeral occasioned by a death in the employee's immediate family. Such time off with pay shall in no event exceed three (3) regularly scheduled working days. The immediate family is defined as the employee's father, mother, spouse, a partner in a legal and recognized marriage or civil union by the State of Arizona, children, father-in-law, mother-in-law, brother, sister, grandparents, grandchildren, stepparents, or stepchildren. Payments shall not be made hereunder where the relative's death occurs while the employee is on vacation or on a leave of absence.

Payments shall be made for regular scheduled workdays lost and proof of relation to deceased, attendance at funeral, and travel time needed may be requested by the Employer.

#### ARTICLE 15 – UNION DUES DEDUCTION

The Employer will deduct an amount equivalent to dues, assessments (provided such assessments are not used to fund any economic activity or anti-company publicity against the Employer) and initiation fees each week from the wages of the employees who voluntarily authorize such deductions in writing, and will forward same to the Union monthly during the term of this Agreement unless the authorization is canceled in writing by the employee to the Union and the Union notifies the Employer. No deduction will be made on any employee until receipt by the Employer of a signed copy of a voluntary deduction authorization.

The Union agrees to submit to the Employer a list of employees' names and deduction amounts for the current month no later than the first day of each month.

The Union shall indemnify and hold harmless the Employer against any and all claims, damages or suits or other forms of liability which may arise out of or by reason of any action taken by the Employer for the purposes of complying with this Article.

The Employer will make a deduction for the Union's Political Action Committee from the wages of the employees who voluntarily authorize such deduction in writing and will forward the Political Action Committee deduction to the Local Union.

Such Political Action Committee deductions will be done weekly and remitted to the Union monthly during the term of this Agreement unless the authorization is canceled with the Union, in writing, by the employee.

#### ARTICLE 16 – PAYROLL RECORDS

The Employer agrees to furnish each employee weekly with a wage statement showing the period covered, name of employee, hours worked, overtime, if any, total amount of wages paid and list of deductions made.

All regular employees shall receive their regular pay and overtime compensation weekly (on a date designated by management but not later than Friday) for services performed during the preceding week.

#### ARTICLE 17 – VISITS TO STORE

The authorized business representative of the Union shall have the privilege of entering the premises of the Employer for the purpose of interviewing the employees so long as such visits do not unduly interfere with the duties of the employees; and such Union representative shall have the privilege of examining the Employer's payroll account of any employee covered by this Agreement where there is a dispute concerning wages of such employee.

#### ARTICLE 18 – HOLIDAYS

<u>Paid Holidays</u>: The Employer agrees that the following days shall be considered holidays and granted without reduction in pay for non-probationary employees:

New Year's Day	Christmas Day
Independence Day	Thanksgiving Day
Labor Day	Four Floating Personal Holidays

Employees hired on or after June 20, 2004, shall be eligible for Thanksgiving and Christmas after their probation period, and three (3) floating personal holidays effective the first of the year following one (1) year of service.

When a holiday falls on a Sunday, the following Monday shall be observed as the holiday, Christmas and New Year's holidays occurring on Sunday will always be observed on Sunday.

In the event the store is open on Thanksgiving and/or Christmas, the Employer shall first take volunteers, by seniority. If there are insufficient volunteers to staff the store, the employees shall be scheduled in inverse seniority order.

<u>Holiday Premium</u>: For employees hired on or before June 19, 2004, work performed on a holiday by a non-probationary employee shall be compensated for at the rate of time and one-half (1 ½). Employees hired on or after June 20, 2004, shall receive a one dollar (\$1.00) per hour premium for all hours worked on the holiday.

<u>Floating Holidays</u>: The floating holidays shall be taken by eligible employees as follows: Employees must request scheduling preference of floating holidays two (2) weeks in advance. The actual day selected shall be by mutual agreement. Any floating holidays not scheduled by September 1 of each year shall be assigned or paid by the Employer before December 31 of each year.

The Employer will approve a minimum of one (1) floating holiday per day per department in any week by seniority. Floating holidays shall not be taken in a week which contains another holiday, unless mutually agreed.

Employees must be on the payroll on January 1 of each year to be eligible for the floating holidays for that calendar year.

<u>Part-Time Employees</u>: Part-time employees shall receive holiday pay based on the average number of hours worked during the week prior to the holiday week and the week in which the holiday occurs according to the following schedule:

Average hours	Holiday pay		
20 to 24 hours	4 hours		
25 to 31 hours	6 hours		
32 and over	8 hours		

<u>Requirements</u>: 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, the day of, 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/or Employer's representative, and also in case of certified illness, provided the employee has worked during the holiday week. Employees on leave of absence are not eligible for holiday pay. Full-time employees normally working four (4), ten (10) hour shifts, shall work/be scheduled a minimum of four (4), eight (8) hour shifts in a holiday workweek exclusive of work performed on the holiday.

# ARTICLE 19 – BOND

Whenever the Employer requires the bonding of any employee or the carrying of any insurance for the indemnification of the Employer, the premiums for the same shall be paid by the Employer.

## ARTICLE 20 – GRIEVANCE AND ARBITRATION PROCEDURE

<u>Exclusive Remedy</u>: The grievance procedure provided herein shall be exclusive means for the disposition of all grievances.

<u>Definitions</u>: The term "grievance" shall mean any dispute between the Employer and the Union as to the meaning, application or interpretation of any provisions of this Agreement and the parties shall exercise every amicable means to settle or adjust such dispute or grievance as follows:

Time Requirements:

- (a) <u>Discharge or Layoff:</u> Upon the discharge or layoff of any employee, other than a probationary employee, the Union may dispute the basis for such discharge or layoff by taking it up as a written grievance no later than nine (9) days from the date of discharge or layoff. Failure of the Union to dispute the basis of any discharge or layoff within the time limit herein provided shall constitute waiver of all rights under this Agreement to dispute such discharge or layoff.
- (b) <u>Pay Discrepancy</u>: Any grievance or dispute claiming alleged errors in computing the amount of pay due an employee shall be limited to one hundred twenty (120) calendar days immediately preceding the date of the filing of the grievance.
- (c) <u>Other Grievances</u>: All other grievances must be submitted in writing not later than fifteen (15) days from date of occurrence of the incident which led to the grievance.

(d) <u>Timeliness</u>: Failure of either party to submit grievances in writing within the time limits herein provided shall constitute waiver of all rights under this Agreement to file such grievances.

#### Grievance Procedure:

<u>Step 1</u> Prior to filing a grievance, the matter in dispute may be taken up orally between a designated Union Representative and a designated Employer Representative. Settlements at this level shall not establish any precedent.

<u>Step 2</u> If a timely grievance has been filed, the matter in dispute shall be taken up in a meeting with the designated Union Representative and a designated Employer Representative.

<u>Arbitration</u> - If a grievance is not satisfactorily adjusted in Step 2, either party may submit the grievance to arbitration for final determination by notifying the other party, in writing, no later than thirty (30) days following the Step 2 process unless the parties mutually agree, in writing, to extend the time limits set forth herein.

<u>Selection of the Arbitrator</u>: Within seven (7) days after receipt of the written demand for arbitration by the other party, the parties shall attempt to select an impartial arbitrator and if they are unable to agree upon such a selection, the party initiating the arbitration shall forthwith request the Federal Mediation and Conciliation Service to submit a list of seven (7) disinterested persons qualified and willing to act as impartial arbitrators, and simultaneously mail a copy of such request to the other party. From this list, within seven (7) days after receipt of the panel, the Employer and the Union shall each alternately strike one (1) name until six (6) names have been eliminated and the person whose name remains shall be selected as impartial arbitrator. The parties shall draw lots to determine who shall make the first selection from the list.

<u>Award</u>: The arbitrator shall hear the submitted grievance as expeditiously as possible and shall render an award within thirty (30) days after the conclusion of the last hearing, unless extended by mutual agreement.

Final and Binding: The award shall be final and binding upon all parties.

Limitations on Arbitrator: The arbitrator shall have no powers to:

- Alter, change, modify or add to or subtract from this Agreement or any provision thereof.
- Determine any provision to be incorporated in a new Agreement or an extension or a renewal of this Agreement.

<u>Expenses:</u> The jointly incurred costs of arbitration shall be paid by the "loser." In all disputes, the arbitrator shall determine the "loser." Any other expenses shall be paid by the party incurring them.

<u>Time Limits</u>: All time limits provided in this Article may be extended by mutual agreement of the parties, in writing.

#### ARTICLE 21 – VALIDITY OF PROVISIONS

It is expressly agreed that in the event any provisions herein be declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining terms and provisions which shall remain in force and effect. Both the Union and the Employer agree they will meet with each other within thirty (30) days after such provision has been declared invalid to negotiate a new clause or language that would conform with the court's decision. If, after thirty (30) days negotiation, no agreement is reached, either party may, upon written notice to the other party, have the matter submitted to arbitration as provided herein.

#### ARTICLE 22 – NO STRIKE -- NO LOCKOUT

- (a) During the term of this Agreement, or any extension thereof, the Employer will not lock out the employees covered by this Agreement and the Union will not instigate, encourage, engage in or take part in any strike, sympathy strike, slowdown or stoppage of work in the Employer's operations. The Employer has the right, in its discretion, to discipline employees who take part in any strike, slowdown or stoppage of work in the Employer's operations.
- (b) If the Employer elects to pursue any remedies it may have as a result of a breach by the Union of paragraph (a) of this Article in any court of competent jurisdiction, the court and not the arbitrator shall determine whether or not paragraph (a) of this Article has been breached.

## ARTICLE 23 – HEALTH AND WELFARE/DENTAL PLAN

(a) <u>Eligibility Requirements</u>: - The Employer shall contribute to a health and welfare/dental plan and eligibility for benefits shall apply for each employee who has worked at least eighty (80) hours for the Employer in the preceding four (4) week month or one hundred (100) hours in a five (5) week month. This contribution will be applicable to each clerk hired before June 20, 2004, who has been employed with the Employer for a period of six (6) calendar months.

Employees hired before June 20, 2004, except for Courtesy Clerks, qualifying for the first time for health and welfare coverage will be covered under Plan B. Said employees who have not advanced to Plan A as of August 1, 2004, will continue to be covered under Plan B for the first thirty-six (36) months after becoming eligible and a Plan B contribution will be made on behalf of such employees during such thirty-six (36) month period. After that time, said employees will be covered under Plan 501-A. Employees hired before June 20, 2004 shall be eligible for coverage under Plan A provided Plan conditions are met. The Employer shall continue to make contributions at the Plan A rate.

All employees hired on or after June 20, 2004 but before December 10, 2009, subject to satisfaction of a nine (9) month eligibility waiting period, and satisfying the eighty (80) or one hundred (100) hours worked requirement described above shall be covered under a Plan B1 for the first fifty-one (51) months. The Employer will make the Plan B1 contribution on behalf of such employees beginning after twelve (12) calendar months of employment and for a thirty-six (36) month period. Beginning with the forty-ninth (49<sup>th</sup>)

month of employment the Employer shall make contributions at the Plan B rate. It is understood that during the first fifteen (15) months of eligibility under Plan B1, such employee shall be eligible for employee only coverage. Dependent children are eligible for benefits when the employee becomes eligible for benefits. After fifteen (15) months of coverage, the employee's spouse will be eligible for coverage. Upon completion of the first fifty-one (51) months of eligibility under Plan B1, the employee shall be covered for the next forty-eight (48) months of eligibility under Plan B and the Employer shall continue to make the Plan B rate contribution through the eighty-forth (84<sup>th</sup>) month of employment. Beginning with the eighty-fifth (85<sup>th</sup>) month of employment the Employer shall make contributions at the Plan A rate. Upon completion of the forty-eight (48) months of eligibility under Plan B, the employee shall be eligible for coverage under Plan A. The Employer shall continue to make contributions at the Plan A rate.

All employees hired on or after December 10, 2009 will be eligible for benefits as provided by the Health and Welfare Fund benefit plan on the first day of the month following 12 months after their date of employment subject to satisfaction of the eighty (80) or one hundred (100) hours worked requirement described above and shall be covered under a Plan B1 for the first forty-eight (48) months of eligibility. The Employer will make the Plan B1 contribution on behalf of such employees beginning after 12 calendar months of employment and for a thirty-six (36) month period. Beginning with the forty-ninth (49<sup>th</sup>) month of employment the Employer shall make contributions at the Plan B rate. Dependent children are eligible for benefits when the employee becomes eligible for benefits. It is understood that during the first twelve (12) months of eligibility under Plan B1, such employee shall not be eligible for spouse or family coverage. Upon completion of the first forty-eight (48) months, the employee shall be covered for the next forty-eight (48) months of eligibility under Plan B and the Employer shall continue to make the Plan B rate contribution through the eighty-forth (84<sup>th</sup>) month of employment. Beginning with the eighty-fifth (85<sup>th</sup>) month of employment the Employer shall make contributions at the Plan A rate. Upon completion of the forty-eight (48) months of eligibility under Plan B, the employee shall be eligible for coverage under Plan A. The Employer shall continue to make contributions at the Plan A rate.

No contributions will be made on behalf of Courtesy Clerks hired on or after June 20, 2004, for the first twenty-four (24) months of employment. Once eligible to participate in coverage, such employees shall be limited to participation, on an employee only basis, under a permanent Plan B1 only. Contributions for such employees will be made at the B1 rate only. Courtesy Clerks hired before June 20, 2004, who qualified for Plan B as of June 20, 2004, shall remain in Plan B. Courtesy Clerks hired before June 20, 2004, who are not eligible for coverage as of June 20, 2004, shall become eligible for Plan B1 coverage after their six (6) month eligibility waiting period. Such Courtesy Clerks shall not advance to Plan B and the Employer shall contribute only B1 contributions on behalf of such Courtesy Clerks after six (6) calendar months of employment.

For the purpose of this Article, hours worked shall include hours paid directly by the Company for: straight-time, overtime, premium hours, sick leave, jury duty pay, funeral pay and vacation.

(b) <u>Contributions</u>: The Employer contribution rates for this Agreement shall be as follows: Fixed hourly Employer contribution rates shall be made on behalf of employees up to forty (40) hours per week and two thousand eighty (2080) hours per year as follows based on hours:

	<u>Plan A</u>	<u>Plan B</u>	<u>Plan B1</u>
Effective 4/11	\$4.20	\$3.45	\$2.75

• Contributions shall not be paid for hours worked during the first twelve (12) month waiting period or first twenty-four (24) months of employment for Courtesy Clerks.

<u>Bargaining Note:</u> The Employer remains obligated to make hourly contributions for all eligible employees who do not elect coverage. In the event current or future law requires coverage of bargaining unit employees in a time period sooner than provided herein and the Trust Fund is required to provide such coverage, the parties understand that the Employer's obligation to make contributions to the Fund are limited as provided herein.

(c) <u>Employee Co-Premium:</u> Employees who are eligible to participate and enroll for benefits as provided by the Fund shall as a condition of such participation authorize the employee's Employer in writing to deduct from the employee's pay a weekly co-premium payment equal to \$5.00 per week if enrolled in employee only coverage; \$10.00 per week if enrolled in employee plus child(ren) coverage or \$15.00 per week if enrolled in employee plus spouse or employee plus spouse and child(ren) coverage.

Such co-premiums shall be made by payroll deduction and forwarded to the Trust Fund on a monthly basis by the Employer.

Deductions shall continue after they are authorized by an employee until the next annual enrollment period designated by the Fund, or until the employee experiences a "life event" as defined by the Fund, whichever is earlier. Employees who do not elect coverage by authorizing such deductions shall not be eligible for health and welfare coverage and shall not be eligible to make a new election until the next annual enrollment, or until the occurrence of a "life event," whichever is earlier. The Employer remains obligated to make hourly contributions for all eligible employees, including employees who do not elect coverage.

(d) <u>Cost Containment</u>: The Trustees are directed to investigate all reasonable cost containment measures and implement those, which the Trustees jointly agree on. The Trustees shall be instructed to review and evaluate the current plan design and funding arrangements for all other plans offered by the Fund to ensure that the plan design can be reasonably supported by the funding available. These plans shall be modified as necessary so that the funding available will support the benefit plan design.

During the term of this Agreement the union trustees shall be allowed to take the laboring oar to make recommendations to the Trustees of the Fund with respect to benefit modifications and plan design with respect to the structure of benefit plans A, B and B1 consistent with the parties objective of stabilizing the Fund's reserves at the current level (1.6 MOR) and with the goal of progressing towards a full 2 months reserve once all contemplated changes, including employee premiums, have become effective and the contributions agreed upon by the bargaining parties with the understanding that such recommendations be made not later than October 25, 2012 and with the further understanding that such recommendations may not reduce the rate of employee copremiums or delay the effective date of their implementation. The employer trustees shall, consistent with their fiduciary duties, support the recommendations of the union

trustees. If there is a deadlock on any such recommendation, the neutral designated to break the deadlock shall be informed the bargaining parties intend that the union trustees recommendations be given preference.

- (e) <u>Reserves</u>: It is agreed that the Trustees shall maintain at all times a cash reserve in the Fund in an amount which they determine is prudent under the circumstances (taking into account the fact that this is not a "maintenance of benefits" contract). In no event, however, shall the Trustees maintain a reserve amount less than what is sufficient to cover the cost of all benefit and administration costs for participants for a two (2) month calendar period. The calculation of such two (2) month reserve amount will be made on a rolling three (3) consecutive calendar month period throughout the period of this Agreement.
- (f) <u>Benefits</u>: The Board of Trustees shall implement and maintain over time plan designs that can be supported by the contribution rates above as recommended by the coconsultants. These changes shall first be effective as early as August 1, 2004, or as soon thereafter as legally permitted. Any deadlocked Trustee motion relating to this paragraph shall be arbitrated on an expedited basis, with the arbitration to take place not later than sixty (60) days following the Trustees' meeting at which the deadlock occurs.
- (g) <u>Legislation</u>: In the event of legislation providing health and welfare or sick leave benefits which are also provided for under this Agreement, the Trustees are directed to immediately amend the plan document deleting duplicated benefits reducing the Employer contributions by an amount which is not attributable to contributions which may be required from the employee.

# ARTICLE 24 – PENSION

#### Desert States Pension Fund

The Parties agree to accept and be fully bound by the terms of the Declaration of Trust and Plan Document of the Desert States Employers and UFCW Unions Pension Fund and any amendments thereto.

Employee groups, who in the Collective Bargaining Agreement which expired on October 25, 2003, were covered by the Desert States Pension Fund, and all employees hired on or after June 20, 2004, under this Agreement shall be covered under the Desert States Pension Fund as provided herein.

(a) <u>Contribution Rates</u>: Effective June 2006 hours worked, the contribution rate shall be ninety-eight cents (\$0.98) per straight time compensable hour for employees hired before June 20, 2004. No contribution shall be required for hours worked by an

employee hired before June 20, 2004, during his probationary period as provided for in this Agreement.

The Employer contributions for employees hired on or after June 20, 2004, will commence on the latter of one (1) year of service with the Employer or twenty-one (21) years of age and shall be at a rate of forty-eight cents (\$0.48) per straight-time compensable hour.

In the event that the Employer is required to make any contributions in excess of the negotiated contribution rates above, in order to avoid funding deficiencies, the Employer shall receive a dollar-for-dollar credit for those additional contributions. When the Board of Trustees reduces benefits to eliminate such future funding deficiencies, the projections used shall anticipate that these contribution credits will be taken as reductions in the negotiated contributions in the next Plan Year.

Effective August 1, 2004, the Employer will contribute forty-eight cents (\$0.48) per hour to the Desert States Pension Plan on behalf of all employees who were classified as Gas Station Attendants on June 20, 2004 who are now classified as All Purpose Clerks. Courtesy Clerks shall become covered by the terms of the pension plan beginning January 1, 1998. The Employer's contribution obligation to the pension plan shall not be increased (i.e., no contributions will be paid on Courtesy Clerk hours).

(b) The Trustees are directed to take the following actions to be effective June 20, 2004, subject to compliance with the IRC Section 204-h notice requirement:

For employees hired on or after June 20, 2004:

- Adopt a monthly benefit accrual rate of twenty-five dollars (\$25) per year of Benefit Credit
- Eliminate the rule of 85 benefit
- Increase the normal retirement age from 62 to 65
- Increase the early retirement reduction factor from 3.3% per year to .5% for each full month (i.e., 6% for each full year) that benefit commencement precedes normal retirement age
- Eliminate the two hundred dollars (\$200) monthly Age 60 Supplement

For employees hired before June 20, 2004, who terminate employment five (5) years or more before reaching their fiftieth (50<sup>th</sup>) birthday:

- Adopt a monthly benefit accrual rate of thirty-five dollars (\$35) for the first ten (10) years of Benefit Credit and forty-five dollars (\$45) for years of Benefit Credit in excess of ten (10) years, applicable to Benefit Credit earned after June 20, 2004
- Eliminate the Rule of 85 benefit for Benefit Credit earned after June 20, 2004
- Increase the normal retirement age from age 62 to 65 with respect to Benefit Credit earned after June 20, 2004

• Increase the early retirement reduction factor from 3.3% per year to .5% for each full month (i.e., 6% for each full year) that benefit commencement precedes normal retirement age for Benefit Credit earned after June 20, 2004

For employees hired before June 20, 2004, who terminate employment less than five (5) years before they qualify for a pension (including employees who terminate by retiring):

- Adopt a monthly benefit accrual rate of thirty-five dollars (\$35) for the first ten (10) years of Benefit Credit and forty-five dollars (\$45) for years of Benefit Credit in excess of ten (10) years, applicable to Benefit Credit earned after June 20, 2004
- (c) The following Exhibit A, Long Term Funding Policy, shall be adopted by the Trustees effective June 1, 2004.

#### <u>EXHIBIT A</u>

#### STATEMENT OF PRINCIPLES ON FUNDING AND BENEFITS

**Purpose**: The purpose of this Statement is to provide the Board of Trustees of the Plan a framework to decide whether they should maintain plan benefits at current levels or decrease them for a given Plan Year. This Statement shall be reviewed annually and whenever the Trustees consider Plan design changes, changes in actuarial assumptions or methods, or any other changes that affect the Plan's actuarial funding status or involve an actuarial cost.

**Long-Term Funding Policy**: The Board of Trustees is authorized and directed to adopt the following long-term funding policy immediately:

The co-consultants will produce with the annual actuarial valuations, a seven (7) year actuarial projection with the goal of identifying future funding deficiencies (defined as where the negotiated contributions are not enough to satisfy the minimum required contributions under Internal Revenue Code Section 412).

These annual projections will be based on the following:

Projections will take into account only negotiated contributions.

The adoption of actuarial changes as follows:

Effective for the 2003 Plan Year, the actuarial cost method shall be changed from the entry age normal cost method to the unit credit cost method, and for purposes of determining the actuarial value of the Plan's assets, the corridor shall be modified from 90%-110% to 80%-120% of the market value of the Plan's assets.

Using the assumptions in the then current annual actuarial valuation as jointly agreed to by the Fund's co-consultants, no unanticipated actuarial gains or losses during the projection time period shall be considered.

If the annual projection indicates any future funding deficiencies during the seven (7) year projection, the Board of Trustees is authorized and directed to amend future benefit accruals (or any other non-protected benefits), effective immediately, in order to eliminate the projected future funding deficiencies.

Notwithstanding the above, the projections accompanying the annual valuations for 2006 and 2007 shall end with the year 2012 (i.e., any deficiencies projected to occur after 2012) and shall not be taken into account until the valuation for 2008.

In the event a reduction or suspension of future benefits is insufficient to eliminate all future funding deficiencies, the contributing Employers may elect to make additional contributions above the negotiated contribution rates in order to avoid such funding deficiencies. If such additional contributions are made, the contributing Employers will receive a dollar-for-dollar credit against future negotiated contributions due to the Plan until such time as such additional contributions have been fully offset.

Any deadlocked Trustee motion relating to a reduction in benefits required under the Long-Term Funding Policy shall be arbitrated on an expedited basis, with the arbitration to take place not later than sixty (60) days following the Trustees' meeting at which the deadlock occurs.

#### UFCW Union and Industry Pension Fund Participants

Participants: Employees hired on or before December 9, 1997, whose work groups were covered by the UFCW Union and Industry Pension Fund shall continue to be covered under that Fund as provided in Appendix B of this Agreement.

(d) <u>Pension Protection Act</u>

The Trustees are authorized and directed to make the 205 election under the Worker, Retiree and Employer Recovery Act of 2008 (WRERA) to extend the Rehabilitation Period three (3) years.

The bargaining parties agree and understand that the Employer's obligation to make pension contributions in addition to the base contribution rate specified in Article 24, Section (a) 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 are authorized and directed to adopt the Rehabilitation Plan Alternate Schedule attached as Exhibit B hereto. If the Alternate Schedule is adopted by the Trustees, it is hereby deemed approved by the bargaining parties and automatically incorporated into this Agreement.

- i. The Alternate Schedule shall be effective with hours worked on and after December 2009 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 reenter 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. In the event the Trustees determine, based on projections provided by the actuaries for the Plan, that, at any time during the term of this Agreement, an Alternate Schedule with lesser contribution rates would be sufficient to reasonably enable the Plan to emerge from critical status by the end of the Rehabilitation Period, the Trustees may amend the Alternate Schedule in a manner that, to the extent possible, would reduce the Employer's supplemental contributions in a manner that such modifications to the Alternate Schedule would enable the Plan to emerge from critical status by the end of the Rehabilitation Period, taking into account to the extent legally permitted any relief available under IRC Section 431(d). In the event the Trustees amend the Alternate Schedule as provided in this subsection (iv), the bargaining parties shall adjust the supplemental contribution rates provided above to reflect the lower rates provided in the amended Alternate Schedule. Notwithstanding the foregoing, if, prior to the effective date of any benefit cuts specified in the Alternate Schedule, the Trustees determine that (a) such benefit cuts are no longer required to avoid critical status or to have a valid Rehabilitation Plan, and (b) the supplemental contributions could be reduced or eliminated, then the Employer supplemental contributions shall be reduced or eliminated accordingly, and the Employer shall be further entitled to recoup the value of any supplemental contributions paid prior to the effective date of the benefit reductions set forth in the Alternate Schedule. This provision shall apply regardless of the reason for the Trustees' determination, including a change in the law and/or improved investment returns. The value of the contributions shall be recouped via a suspension of contributions in an amount equal to the amount of the supplemental contributions paid.
- v. Notwithstanding any other provision of this Agreement to the contrary, in the event the Employer becomes entitled to any reduction in contribution rates to the Pension Trust pursuant to subsection (iv) above, the Employer agrees to increase its rate of contribution to the Health and Welfare Trust in an amount equal to the lesser of (a) the amount of the reduction in Employer contributions to

the Pension Trust; and (b) twenty cents (\$0.20) per hour. The payment of the additional contribution to the 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 (d). 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.

- vi. 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.
- vii. 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).

The existing Long Term Funding Policy of the Fund shall be suspended for the term of this Agreement, provided that the Alternate Schedule (as it may be modified from time to time) must go into effect and remain in effect as contemplated in this Agreement. Upon expiration of the term of this Agreement or when the Alternate Schedule is no longer in effect or no longer required, the Long Term Funding Policy shall automatically go back into effect without the need for further action by the Trustees or any other party.

## EXHIBIT B

## Desert States Employers & UFCW Unions Pension Plan Schedule of Contributions and Benefits

#### **REHABILITATION PLAN – 2009 PLAN YEAR ALTERNATE SCHEDULE**

#### Contribution and Benefit Adjustments

- 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.
- Preserve the Rule of 85 Pension
- 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:
  - Special Early Retirement Benefit, and Special 20 Benefit;
  - Subsidized Early Retirement Reduction Factors;
  - Age 60 Supplement;
  - Disability Pension;
  - 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;
  - Pre-Retirement Death Benefits in Excess of QPSA, including Special Death Benefit under section 8.9 of IRF Plan (Exhibit E to Plan document);
  - Payment options other than Single Life Annuity and QJSA; and
  - All other adjustable benefits within the meaning of Code section 432(e)(8)(A)(iv) other than the Rule of 85 Pension.
  - 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)
- Benefit reductions effective January 1, 2011

#### **Rehabilitation Period**

January 1, 2012 through December 31, 2024.

## Plan to Emerge from the Red Zone and Annual Benchmarks to Assess Progress Toward Emergence

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.

As of	Funding Standard Account Credit (Deficiency) Balance
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
12/31/2026	43,755,154

## Desert States Employers and UFCW Unions Pension Plan Annual Benchmarks for Emergence from the Red Zone

## **ARTICLE 25 – JOB STEWARDS**

The Employer recognizes the right of the Union to designate job stewards and alternates from the Employer's seniority lists.

No designated job steward shall be discriminated against because of his activities as a job steward.

It is agreed that the Company will grant a paid leave of one (1) day per year for two (2) employees per store to attend a steward seminar. Payment shall be based on the employee's normal daily schedule and such hours shall not count toward computation of overtime.

The names of those selected to attend the seminar shall be given to the Employer a minimum of two (2) weeks in advance of the meeting date.

## ARTICLE 26 – MANAGEMENT RIGHTS

All rights of the Employer which existed prior to entering into this Agreement and not expressly limited by the terms of this Agreement are hereby reserved exclusively to the Employer, including, without limitation, the right to manage the business, direct the workforce and discipline or discharge employees for just cause, to create and enforce reasonable work rules and otherwise efficiently manage the business as determined by the Employer.

## ARTICLE 27 – TERM OF AGREEMENT

This Agreement shall be in effect from October 26, 2014, to and including October 29, 2016, and from year to year thereafter, subject to amendment, alteration or termination by either party upon sixty (60) days written notice given prior to the expiration date.

## FOR THE EMPLOYER

## FOR THE UNION

FRY'S FOOD STORES, INC.

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

Stephen J. DiCroce Regional VP of Labor Relations James J. McLaughlin President

Date

Date

Donna Tanori Director, Human Resources

Date

James W. Nygren Director of Labor Relations

Date

# APPENDIX A WAGES

<b>CLASSIFICATION</b>	EFFECTIVE 10/27/13	<u>EFFECTIVE</u> <u>10/26/14</u>	EFFECTIVE 10/25/15
Meat Cutter			
First 1040 hours worked	\$10.06	\$10.06	\$10.06
Next 1040 hours worked	\$10.97	\$10.97	\$10.97
Next 1040 hours worked	\$12.80	\$12.80	\$12.80
Next 1040 hours worked	\$14.63	\$14.63	\$14.63
Journeyman	\$19.54	\$19.79	\$20.04
All Purpose Clerks (hired or promoted before November 18, 2000, as a Food assigned as a Food Clerk on June 19, 2004) There shall assignment to this classification			
Thereafter	\$16.22	\$16.47	\$16.72
All Purpose Clerks (hired or promoted after November 18, 2000, as a Food C assigned as a Food Clerk on June 19, 2004) There shall assignment to this classification			
Thereafter	\$16.22	\$16.47	\$16.72
All Purpose Clerk (previously assigned as a G.M.C. and hired or promoted I November 17, 2000) There shall be no future assignment classification			
Thereafter	\$13.55	\$13.80	\$14.05
All Purpose Clerk (previously assigned as a G.M.C. and hired or promoted a 17, 2000) There shall be no future assignment to this class			
Thereafter	\$13.55	\$13.80	\$14.05

CLASSIFICATION	EFFECTIVE 10/27/13	EFFECTIVE 10/26/14	<u>EFFECTIVE</u> <u>10/25/15</u>
All Purpose Clerk (previously assigned as a Self-Service Meat Wrapper and May 7, 1992) There shall be no future assignment to this			
Thereafter	\$17.94	\$18.19	\$18.44
All Purpose Clerk (previously assigned as a Self-Service Meat Wrapper and May 7, 1992) There shall be no future assignment to this			
Thereafter	\$14.90	\$15.15	\$15.40
All Purpose Clerk (previously assigned as a Counter Person Self-Service M and hired prior to June 1, 2001) There shall be no future this classification			
Thereafter	\$16.72	\$16.97	\$17.22
All Purpose Clerk (hired, assigned or promoted on or after June 20, 2004 an December 10, 2009)	nd prior to		
First 520 hours worked	\$ 6.50	\$ 6.50	\$ 6.50
Next 1040 hours worked	\$ 7.00	\$ 7.00	\$ 7.00
Next 1040 hours worked	\$ 7.25	\$ 7.25	\$ 7.25
Next 780 hours worked	\$ 7.50	\$ 7.50	\$ 7.50
Next 780 hours worked	\$ 8.30	\$ 8.30	\$ 8.30
Next 780 hours worked	\$ 8.70	\$ 8.70	\$ 8.70
Next 780 hours worked	\$ 9.32	\$ 9.32	\$ 9.32
Next 780 hours worked	\$ 9.74	\$ 9.74	\$ 9.74
Next 780 hours worked	\$10.18	\$10.18	\$10.18
Next 780 hours worked	\$10.72	\$10.72	\$10.72
Next 780 hours worked	\$11.50	\$11.50	\$11.50
Thereafter	\$13.05	\$13.30	\$13.55

CLASSIFICATION	CURRENT	EFFECTIVE 12/28/14	EFFECTIVE 10/25/2015
All Purpose Clerks (hired on or after December 10, 2009)		<u></u>	
	\$7.25		
	\$7.50		
	\$7.90		
First 1040 hours	\$8.05	\$8.10	\$8.10
Next 1040 hours	\$8.35	\$8.25	\$8.25
Next 780 hours	\$8.75	\$8.45	\$8.45
Next 780 hours	\$9.15	\$8.55	\$8.55
Next 780 hours	\$9.55	\$8.75	\$8.75
Next 780 hours	\$9.95	\$9.15	\$9.15
Next 780 hours	\$10.45	\$9.55	\$9.55
Next 780 hours	\$10.95	\$9.95	\$9.95
Next 780 hours	\$11.45	\$10.45	\$10.45
Next 780 hours		\$10.95	\$10.95
Next 780 hours		\$11.50	\$11.50
Next 520 hours		\$12.25	\$12.25
Thereafter	\$13.05	\$13.30	\$13.55
		EFFECTIVE 10/26/14	

CLASSIFICATION	<u>CURRENT</u>	EFFECTIVE 10/26/14	EFFECTIVE 10/25/15
GM Manager	\$16.57	\$16.82	\$17.07
Chinese Kitchen Manager	\$15.10	\$15.35	\$15.60
Bistro Chef/Manager	\$15.95	\$16.20	\$16.45
Deli Manager	\$17.25	\$17.50	\$17.75
Certified Wine Steward	\$16.97	\$17.22	\$17.47
Head Meat Cutter	\$19.88	\$20.13	\$20.38
Head Counter Person	\$17.30	\$17.55	\$17.80
Head Counter Person Prescott	\$17.52	\$17.77	\$18.02

#### CLASSIFICATION

EFFECTIVE EFFECTIVE CURRENT 10/26/14 10/25/15

Min. Wage

#### Courtesy Clerk

(hired and assigned on or before December 9, 2009)

Thereafter

Courtesy Clerks hired on or before December 9, 2009 who are at the top Courtesy Clerk rate will be "red circled." Their individual rate of pay will be frozen until such time as the contract rates provide above, or the minimum wage, is greater than their red circled rate, at which time they will no longer be red circled and will be paid the greater of the contract rate or minimum wage.

CLASSIFICATION	CURRENT	<u>EFFECTIVE</u> 10/26/14	EFFECTIVE 10/25/15
Courtesy Clerk		<u> </u>	<u></u>

(hired or assigned on or after December 10, 2009)

Thereafter

Min. Wage

The following jobs, when designated by management, shall be paid the top rate for their classification plus the following premium rates:

Assistant Front End Manager	\$1.00 per hour
Assistant Grocery Manager	\$1.00 per hour
Assistant Produce Manager	\$1.00 per hour
Assistant Meat Manager Trainee	\$1.00 per hour
Bakery Asst. Manager	\$1.00 per hour
Deli Asst. Manager	\$1.00 per hour
G/M Asst. Manager	\$1.00 per hour
Lead Floral	\$1.00 per hour
Receiving/DEX Clerk:	\$1.00 per hour
Scanning Coordinator	\$1.00 per hour
Lead Clerk	\$0.35 per hour
Dairy Lead	\$0.35 per hour
Frozen Lead	\$0.35 per hour
Section Heads	\$0.75 per hour

The following jobs, when designated by management, shall be paid the following premium rates:

Certified Pharmacy Technician	\$2.00 per hour
Cake Decorator	\$1.00 per hour
Bake-off Baker	\$0.35 per hour

An employee who is specifically designated by management to perform all of the tasks, duties and responsibilities of a management employee who is absent in excess of one week due to vacation or leave of absence shall be paid a premium of forty cents (\$0.40) per hour worked in such assignment.

Globe employees shall be transferred to the Food and Drug Agreement Wage Scale based on their classification and date of hire to the same rate if such exists or to the nearest rate that gives them an increase if the same rate does not exist. With respect to top rate employees, the company will calculate the difference between the Food and Drug top rate for the respective classification and wage tier and the Globe Agreement and effective with the October 26, 2014 wage increase adjust the top rate to the midpoint between the Food and Drug rate and the Globe rate. Effective October 25, 2015, such top rate employees shall be paid the top rate of the Food and Drug Agreement for their respective classification and wage tier.

#### Department Store Clerks

- Clerks at the \$8.31 rate or lower and clerks at the \$11.25 rate move to the new scale and progression hours are reset to zero for that new step.
- Clerks at the \$8.86 and hired on or after January 1, 2012 move to the \$9.15 rate in the new scale and progression hours are reset to zero for that step.
- Clerks at the \$8.86 rate and hired prior January 1, 2012 move to the \$10.45 rate in the new scale and progression hours are reset to zero for that step.
- All existing Section Heads all move to the top rate (currently \$13.05) except the Employer will reassess the total number of leads needed and may reclassify some to department store clerks. Those Lead Clerks that remain as leads will continue to receive the \$0.75 cent per hour lead premium above the top rate.

Existing All Purpose Clerks in the wage scale for APC's hired after 12/10/09

- APC's at the \$9.15 rate or lower move to the new scale. If the rate is the same rate such APC's take their accumulated progression hours in that step with them if the new rate is a higher rate than their progression hours are reset to zero for that new step.
- APC's at the \$9.55 rate and hired on or after January 1, 2012 move to the \$9.55 rate in the new scale and such APC's take their accumulated progression hours in that step with them.
- APC's at the \$9.55 rate and above and hired prior January 1, 2012 remain in the rates and progression steps of the old scale.
- APC's at the \$9.95 rate and hired on or after January 1, 2012 move to the \$9.95 rate in the new scale and such APC's take their accumulated progression hours in that step with them.
- APC's at the \$9.95 rate and above and hired prior January 1, 2012 remain in the rates and progression steps of the old scale.

## <u>APPENDIX B</u>

## UFCW INDUSTRY PENSION FUND PARTICIPANTS

- (a) Pima County Bargaining Unit:
  - 1. Meat Department employees hired after December 9, 1997, shall be covered by the Desert States Employers and UFCW Unions Pension Plan.
  - 2. Meat Department employees hired prior to December 9, 1997, only:
    - a. The Employer agrees to contribute one hundred twenty-three dollars and eighty-nine cents (\$123.89) per month to the United Food and Commercial Workers Union and Industry Pension Fund for each eligible employee. An eligible employee shall be an employee who has worked eighty (80) hours during the previous month. A contribution on behalf of new employees shall be made the first (1st) of the month following completion of thirty (30) days of employment.
    - b. It is further agreed that the Trust Agreement of the United Food and Commercial Workers Union and Industry Pension Fund shall be accepted and adopted by the parties and by this reference be made a part of this Agreement, together with certain participation agreements to be executed by the Employer.
    - c. The contributions that are due and payable under this Article shall be remitted to the United Food and Commercial Workers Union and Industry Pension Fund no later than the twentieth (20th) day of the month immediately following the month in which the qualifying hours are worked.
    - d. If the Employer has been delinguent in the payment of contributions indisputably owed, or in the payment of an amount due under any note given by the Employer to secure the same, for a period of sixty (60) days or more, the Board of Trustees of the United Food and Commercial Workers Union and Industry Pension Fund may, after thirty (30) calendar days notice as set forth below, exclude such Employer and its employees from further participation in the Pension Trust Fund. Such exclusion shall not relieve the Employer from the obligation to pay contributions on hours worked or paid for prior to the date thereof. No employee shall be entitled to benefits or receive service credits, nor shall contributions be owing, for hours worked or paid for on and after date of exclusion. Exclusion shall be effective no less than thirty (30) calendar days after written notice to the Employer and its employees, unless the Employer pays the amounts owing within such time. Reinstatement may be allowed on such terms and conditions as the Board of Trustees may adopt.

## APPENDIX C

## MARICOPA COUNTY GEOGRAPHIC AREAS

The parties agree that where the term geographic area is used in the contract with respect to Maricopa County, that such areas shall be defined as follows:

- <u>Area A:</u> Will be comprised of all stores west of Interstate 17 and west of 19th Avenue.
- **<u>Area B:</u>** Will be comprised of all stores east of Interstate 17 and north of McDowell Road.
- <u>Area C:</u> Will be comprised of all stores east of 19th Avenue and south of McDowell Road.

(These seniority areas may be modified by mutual agreement between the Union and Company.)

## LETTERS OF AGREEMENT

The Letters of Understanding, which are carried over for the term of the Agreement, are as follows; all others are deemed null and void.

- 1. Department Listing. (Modified 10/31/14)
- 2. Competitive Operations. Dated 05/20/05
- 3. Christmas Day Staffing. Dated 05/20/05
- 4. Membership Recruitment (New and Existing Stores). Dated 5/20/05 (Modified 10/31/14)
- 5. Department Head Seniority Protection. Dated 05/20/05
- 6. Managers in Bargaining Unit. Dated 05/20/05
- 7. Fry's Marketplace Merger into Fry's Clerk and Meat Agreement. Dated 5/20/05
- 8. Fry's Signature Stores. Dated 4/20/10 (Modified on 10/31/14)
- 9. Request for Arbitration. Dated 4/20/10
- 10. Pending Arbitration Review Committee. Dated 4/20/10
- 11. Multiple Assistant Store and Department Managers. Dated 4/20/10
- 12. Union Access to Orientation. Dated 4/20/10
- 13. Management Step Down. Dated 8/8/12
- 14. Pharmacy Technicians. Dated 9/19/12
- 15. APC Assigned As Store Administrative Support. Dated 10/17/12 (Modified 10/31/14)
- 16. APC Assigned As Bookkeepers. Dated 1/18/13 (Modified 10/31/14)
- 17. Store 673 Grill and RX Tech Certification. Dated 3/29/13
- 18. Leadership FT Status. Dated 4/12/13
- 19. Temporary Diversion Of 20¢ Of Pension Trust Supplemental Contribution to UFCW and Arizona Employer's Health Fund. Dated 7/1/13 (Modified 10/31/14)
- 20. Doctor's Note Policy. Dated 7/26/13
- 21. Certified Wine Stewards. Dated 9/18/13
- 22. Vacations. Dated 11/25/13

- 23. Kroger Personal Finance (KPF) Pilot. Dated 7/31/14
- 24. Minimum Wage.
- 25. Clarification of Pension Contribution Language.

## FOR THE EMPLOYER

FRY'S FOOD STORES, INC.

## FOR THE UNION

## UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

Stephen J. DiCroce Regional VP of Labor Relations James J. McLaughlin President

Date

Date

Donna Tanori Director, Human Resources

Date

James W. Nygren Director of Labor Relations

Date

The Kroger Co. Labor Relations Department



65 Tejon Street Denver, Colorado 80223 Direct Dial (303) 778-3269 Fax (303) 778-2040

Mr. James McLaughlin7 President UFCW Local No. 99 2401 N. Central Avenue Phoenix, Arizona 85004

## Re: Fry's Food Stores Agreement - Department Listings

Dear Mr. McLaughlin:

In accordance with the provisions of the above referenced collective bargaining agreement, Fry's Food Stores hereby gives notice to the Union as to configuration of Departments in its Traditional Stores as of January 1, 2004. The Departments are as follows:

Front-end Produce Bakery Deli Meat Service Meat/Seafood GM/HBA Grocery Pharmacy Department Stores (this letter modified on 10-31-14)

Sincerely,

Stephen J. DiCroce Senior Director of Labor Relations

Mike Donnelly Steve McKinney Richard Magner Jim Nygren

#### between

## FRY'S FOOD STORES, INC.

### and

## **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99**

## **COMPETITIVE OPERATIONS**

Notwithstanding the provisions of the current Collective Bargaining Agreement between the parties March 19, 2003, through October 25, 2008, either party upon thirty (30) days written notice may, with mutual agreement, reopen the Agreement to negotiate its provisions in the event that a competitor in any major line of services comparable to the Company's commences an operation wherein a competitive advantage is enjoyed.

FOR THE UNION:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

James J. McL President Date

FOR THE COMPANY:

Stephen J. DiCroce Schior Director Labor Relations Date 6.3.05

Richard D. Magner Director, Human Resources & Labor Relations Date 5 - 20 - 05

James W. Nygra

Director of Labor Relations Date 5-20-25

#### between

## FRY'S FOOD STORES, INC.

#### and

#### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

#### CHRISTMAS DAY STAFFING

Recognizing that a majority of its employees are desirous of not working on Christmas Day, the Employer agrees that unless principal competition in the area remains open for business on December 25, the Employer intends to remain closed for business on December 25. In the event that principal competition is open on Christmas Day, the Employer will meet with the Union to discuss Christmas Day staffing requirements if the Employer intends to open for business on Christmas Day. If the parties do not agree on staffing, the contract language of Article 18 shall apply.

FOR THE UNION:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

James J. McLaughlin President Date

FOR THE COMPANY:

Steppien J. DiCroce Senior Director Labor Relations Date (4:3-05

Maga

Richard D. Magner Director, Human Resources & Labor Relations Date 5 - 20 - 05

lames W. Nvgren

Director of Labor Relations Date 5-20-025

#### between

## FRY'S FOOD STORES, INC.

#### and

## UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

### MEMBERSHIP RECRUITMENT (NEW AND EXISTING STORES)

Fry's Food Stores and UFCW Local 99 hereby agree to terminate the existing practice regarding access to the stores and the Letter of Understanding regarding Membership Recruitment and to agree as follows:

- 1. This Agreement shall become effective immediately upon the date and time that the parties reach a tentative agreement for a new collective bargaining agreement.
- 2. Local 99 Representatives will be granted access to each store covered within the jurisdiction of the existing bargaining units for the purpose of recruiting new members. Such representatives must contact the Store Manager/Assistant Manager in advance of the visit to let management know the date and time of such visit. Upon arrival at the store, the Union Representative will announce his/her presence to the front-end management person on duty.
- 3. The Employer will make available a mutually agreeable designated location in the store for the Union to meet with employees. The Union agrees to confine its recruiting to this designated area in accordance with the notice given in paragraph #2 above. The Employer will also post a notice of the Union's presence and location in advance of such meeting so that employees have adequate notice.
- 4. Discussions between the employee and the Union Representative will take place on non-work time and in the designated area and off the sales floor and not in the employee work areas, except as provided in #5 below.
- 5. The Employer will allow the Union Representative to visit with the employee during work time provided the following conditions are met:
  - a. The Union Representative shall request of the ranking store management employee on duty to visit with an individual employee.
  - b. Management will allow the employee to visit with the Union Representative provided that store needs do not require the employee's immediate attention to customer service. Management determines whether the employee is needed to serve customers at the time requested by the Union Representative. If the Union disagrees with the manager's assessment then the matter should be handled as provided in #5 (e) below.

- c. Such meeting will in all cases take place in the designated area of the store as described in #3 above.
- d. If during such visit, the employee is needed to service customer needs, then such visit shall immediately be terminated and the employee shall promptly return to their workstation. In such event, management will allow the visit to continue when business allows.
- e. In the event the Union Representative fails to follow the procedures prescribed herein, then management agrees to contact the President of the local and give the Union the opportunity to resolve the issue. In the event of a repeat violation, in the same store, management reserves the unilateral right to suspend this provision (Section 5) for a period of three (3) months, in such even the Union reserves the right to grieve and arbitrate this decision.
- 6. This Agreement covers Union access for membership recruitment purposes and does not affect the Union's right of access to enforce the labor agreement or process grievances. It is understood that if during the normal servicing of the agreement by the Union Representative, a newly hired employee inquires about Union membership, the Employer agrees that such inquiry shall not violate this Agreement provided that the discussion does not interfere with the servicing of customers.
- 7. Whenever the Employer opens a store within one of the bargaining units as described in the preamble of the Collective Bargaining Agreement, the Employer shall, upon request by the Union, grant access after the location has been open for business at least thirty (30) calendar days. The Employer agrees to send the Union, not later than twenty-one (21) days following opening a roster containing the names, addresses, phone numbers and dates of hire of employees in such new store who would be covered under the Collective Bargaining Agreement.

The Employer agrees in such new store not to construct wage scales in excess of those paid to bargaining unit employees or to provide eligibility provisions and tunnels for health and welfare coverage which are more generous than those provided for bargaining unit employees.

The appropriate bargaining unit shall be as set forth in the labor agreement, which covers the bargaining unit for the area in which the store is opened. For purposes of card check, the eligible employees shall be those who are actively employed within the appropriate unit on the date in which the Union exercises its request for a card check. Upon request by the Union to the Employer for a card check, a card check shall be conducted by a neutral third party mutually agreed upon by the parties, within seven (7) days of the claim of majority representation. Any disputes concerning the interpretation or application of this Agreement shall be subject to the grievance and arbitration procedures set forth in the appropriate labor agreement between the parties.

8. With respect to membership recruiting, the Employer retains its right to discuss with its employees their right in the state of Arizona. The Company will maintain a neutral position with employees as to Union affiliation. It shall not be a violation of this Agreement for the Employer to answer questions, to correct misstatements by the Union

or to explain to employees their terms and conditions of employment. In addition, the Employer agrees to distribute to each employee the attached joint statement with Union Membership application affixed to each newly hired employee. The Union agrees to provide copies of such statement and membership application to each store in the bargaining unit.

9. The Union agrees that it will not affix any permanent fixture, bulletin board, etc. to Company property. The Company will provide ample bulletin board space for use by the Union to post official Union notices.

Agreed this 16<sup>th</sup> day of June 2004. (This letter modified on 10-31-14).

## FOR THE EMPLOYER

FOR THE UNION

Stephen J. DiCroce Regional VP of Labor Relations James J. McLaughlin President

Date

Date

Donna Tanori Director, Human Resources

Date

James W. Nygren Director of Labor Relations

Date

# LETTER OF UNDERSTANDING between

## FRY'S FOOD STORES, INC.

and

### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

## DEPARTMENT HEAD SENIORITY PROTECTION

Bargaining unit Meat Managers, Head Meat Cutters, and Seafood Managers shall be protected from layoff.

FOR THE UNION:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

James J. McLaughlin President Date FOR THE COMPANY:

Stephen J. DiCroce

Scenior Director Labor Relations Date 6-3-05

8 Maeri

Richard D. Magner Director, Human Resources & Labor Relations Date 5-20-05

arez

Director of Labor Relations Date 3-20-25

#### between

#### FRY'S FOOD STORES, INC.

#### and

#### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

#### MANAGERS IN BARGAINING UNIT

All former Smith's/Smitty's/Fred Meyer Produce Managers, Bakery Manager, and Meat Managers who chose to remain in the bargaining unit will be grand fathered and will remain in the bargaining unit. Therefore, said managers will receive all contractual benefits contained within the Collective Bargaining Agreement.

FOR THE UNION:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

James J. McLaughlin President Date 5 20 05 FOR THE COMPANY:

Stephen J. DiCroce Senior Director Labor Relations Date 6 3-05

Richard D. Magner Director, Human Resources & Labor Relations Date 5 - 20 - 05

ames W. Nyareo

Director of Labor Relations Date 5-30-25

#### between

## FRY'S FOOD STORES, INC.

#### and

### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

## FRY'S MARKETPLACE MERGER INTO FRY'S CLERK AND MEAT AGREEMENTS

Fry's Marketplace department heads (meat, produce, service deli, and bakery) who currently work forty-eight (48) hours a week will be allowed to maintain their forty-eight (48) hours so long as one of the workdays is a Sunday.

FOR THE UNION:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

James J. McLaughlin President Date FOR THE COMPANY:

Stephen J. DiCroce Senior Director Labor Relations Date  $(3 \cdot 3 \cdot 0.5)$ 

Magner

Richard D. Magner Director, Human Resources & Labor Relations Date 5-20-05

James W. Nygre

Director of Labor Relations Date 5-20-05-

# LETTER OF UNDERSTANDING between FRY'S FOOD STORES, INC. and UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

## FRY'S SIGNATURE STORES

Fry's Food & Drug Stores and UFCW Local #99 hereby agree that upon the signing of this agreement, the following provisions will be effective for the Fry's Signature Stores opened or converted within the established jurisdictions of this Food and Drug Store Collective Bargaining Agreement or the Marketplace Collective Bargaining Agreement.

A) A Food and Drug Store opened or converted to "Signature" Store shall be operated under the Food and Drug Store Collective Bargaining Agreement except that the Company may assign a Home Manager. Such manager shall be excluded from the bargaining unit and shall be in addition to the current management exclusions permitted under the Food and Drug Collective Bargaining Agreement. The Signature Store Home Manager will not be used in the Grocery side of the store's operation.

The original document was signed by Steve DiCroce on 4/20/10 and James McLaughlin on 4/23/10. Modified on 10/31/14

FOR THE UNION:

Stephen J. DiCroce Regional VP of Labor Relations James J. McLaughlin President

Date

Date

#### between

## FRY'S FOOD STORES, INC.

#### and

#### **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99**

### **REQUEST FOR ARBITRATION**

The Employer and Union agree as follows:

Whereas, UFCW Local 99 bylaws contain a provision that allows a member to appeal the Union's recommendation not to arbitrate a member's particular grievance,

Whereas, this appeal procedure may cause the decision to arbitrate a particular grievance to go beyond the thirty (30) day time limit,

Whereas, the union certainly has the right to request arbitration and then cancel such arbitration,

Therefore, the company would agree to extend the thirty (30) day time limit for requesting arbitration provided the Union notifies the Company in writing of the grievance and the date of the appeal and further provided that in the event the Union grants the appeal and chooses to arbitrate said grievance that the Union must request such arbitration within ten (10) days after the appeal date

The original document was signed by Steve DiCroce on 4/20/10 and James McLaughlin on 4/23/10.

#### between

#### FRY'S FOOD STORES, INC.

#### and

#### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

#### PENDING ARBITRATION REVIEW COMMITTEE

Effective upon ratification of a collective bargaining agreement, Fry's and UFCW Local 99 agree to adopt a Pending Arbitration Review Committee (hereinafter referred to as "The Panel") procedure as outlined below. Notwithstanding the provisions of such agreement, the parties recognize that arbitration's already scheduled prior to the effective date of this agreement shall be arbitrated as in the past and not subject to the provisions of this agreement unless the parties mutually agree to do so.

The Panel is a Joint Committee, which shall consist of a Union Representative-appointed by UFCW Local 99 and a Management Representative appointed by Fry's. This Panel is charged with the responsibility of establishing and implementing the provisions of this Letter of Understanding. The procedure contained herein shall become effective thirty (30) days following ratification of this Agreement. Contract interpretation disputes shall not be subject to this procedure.

- 1. The Panel Representatives shall prepare a Docket of the Cases to be heard. Only the number of cases that can reasonably be expected to be heard in the hearing time allotted should be placed on the Docket. In the event cases on the Docket are not heard then such cases will be placed first on the Docket for the next hearing date. Written Decisions from the hearing will be prepared and forwarded to each Representative on the Panel by the arbitrator selected to the Panel as provided herein. The Docket for each hearing date shall be finalized not later than 2 weeks prior to the scheduled hearing date.
- 2. The Panel shall convene one Panel Hearing sessions each month on the dates and locations designated by the Panel Members. Each Panel Hearing session shall be two consecutive days in length. The Panel Members may mutually agree to cancel Panel Hearing sessions if the volume of cases warrants a reduced Hearing schedule. Prior to January 1 of each year, a Meeting Schedule shall be mailed to all affected Parties. If the Members find it mutually agreeable that a designated Meeting be held on some other date or at another location, said Meeting can be changed upon notification to all Parties involved.
- 3. The expense for Meeting Rooms for the Hearings will be the joint responsibility of the UFCW and Fry's. Each side shall pay an equal share. Expenses for the arbitrator serving on the Panel shall be apportioned based on the cumulative results of all cases heard on that Docket and apportioned as follows: Grievance denied, Union pays full share for that case. Grievance sustained Employer pays full share for that case. The Arbitrator shall be responsible for calculating each side's respective share of the Arbitrator's expense and advising the Panel Representatives of the amounts due.

- In each instance, Grievances and Disputes must be taken up as provided in the Grievance and Arbitration provisions of the Collective Bargaining Agreement.
- 5. If the Grievance and/or Dispute is not resolved in any of the steps prior to the submission of the Grievance or Dispute to the Panel and the Union has properly requested the grievance for arbitration then such case may be included in the pool of cases pending arbitration for scheduling on the Docket.
- 6. If the Panel reaches a decision on a Grievance or Dispute by majority vote, said decision shall be final and binding upon the Parties, including the Employer, the Local Union and the Employees involved. However, if the Panel is unable to reach a decision on a Grievance or Dispute, the decision shall proceed to-the sitting arbitrator who shall participate in the Panel's deliberation on the grievance and a vote to break any Deadlock. The sitting Arbitrator will render a Bench Decision, which shall be final and binding upon the Parties.
- 7. No Local Union Representative directly involved in a Grievance and no Employer Representative who is directly involved in a Grievance or Dispute who have participated in the investigation of, or prior hearings related to the Grievance or Dispute before the Panel shall be permitted to act as a member of the Panel hearing the Case.
- 8. Prior to the start of each calendar year the Panel Representatives shall select two (2) arbitrators who shall be the sitting arbitrator on the Panel on a rotating basis. If the parties are unable to mutually agree on the sitting arbitrators then two panels of arbitrators shall be requested from FMCS and the parties shall strike each panel to determine the sitting arbitrators.
- 9. Both the Local Union and Local Management will provide copies of documentation to be used in presenting their Case to all Panel Members, the Opposing Party and the sitting arbitrator.
- 10. Either Party shall have the right to postpone a Case one (1) time. No other postponements will be permitted except upon approval of the Representatives of the Panel.
- 11. Attorneys shall not represent or assist either party at the Panel Hearing.
- 12. The operation of the Panel shall be in accordance with the Rules and Procedures established by the Panel to govern its conduct and procedure.
- 13. The Panel will make every attempt to hear Cases in order of such cases request for arbitration and all Discharges. Demotions and Improper Layoff cases shall be placed at the top of each Docket and have priority to be heard first. In Cases of Emergency and/or Expediency, the Panel Representatives can by mutual agreement hear any Case or group of Cases Out-of-Order.
- 14. In hearing a Case, either Party may present evidence bearing on the facts of

the particular Case and may present testimony in person or by Sworn Affidavit in cases of non-material witnesses. A Witness giving Oral Testimony will be allowed in the Hearing Room only when this Testimony is required. Witnesses can be cross-examined and Panel Members and the Arbitrator can also ask questions of the witness. The Witness will be excused from the Room when his Testimony is concluded. Evidence and witness identity presented at Panel Hearings, which was not available at Step II meetings, must be made available to the opposite Party at least seven (7) calendar days prior to the Panel Hearing in time for the opposite Party to evaluate and/or investigate such evidence. No other evidence will be allowed in the hearing except for unanticipated rebuttal evidence. During the Hearing of a Case, Panel Members, the sitting arbitrator, the Parties presenting the Case, the Grievant(s) will be the only Parties in the Hearing Room. Each "Presenting Party" may include a spokesperson and two (2) other people acting as "Presenters" of a Case.

- 15. Case Presentation shall adhere to the following format:
  - a. First Presenter.
  - b. Second Presenter.
  - c. First Presenter Rebuttal.
  - d. Second Presenter has Final Rebuttal.
- 16. After each Party has presented its Case, all interested Parties shall leave the Hearing Room.
- 17. The Panel shall make all Decisions in Executive Session, either after all Cases has been heard or after each individual Case, whichever is most expedient. When the Panel is in Executive Session to decide a Case or Cases, all other persons except the Panel Members and the sitting arbitrator must leave the room and be out of sight and hearing of the Panel. After a Decision or Decisions have been reached, the Committee may advise those interested Parties who are still present of the Decision of the particular Case or Cases. All Decisions shall be forwarded within forty-eight (48) hours of the Hearing.
- 18. After each Panel Meeting, Written Decisions of the Meeting shall be prepared by the sitting arbitrator. The Decisions may outline the facts and findings reached by the Panel on each Case heard or may contain only the Decision reached in the particular Case. Copies of all such Decisions shall be provided to Members of the Panel, the Employer and the Union
- 19. The Written Decisions shall be considered non-precedent setting and shall constitute the Official Minutes of the Meeting.
- 20. The Panel Representatives, by mutual agreement, shall have the authority to amend, modify or otherwise change these Rules, as they may deem necessary to perform the functions authorized by the provisions of the collective bargaining agreement.
- 21. Either party may give written notice to the other party of their intent to

terminate this Agreement and return to processing grievances in accordance with the collective bargaining agreement not sooner than six (6) months following the effective date of this Agreement. In the event a party terminates this Agreement, it is understood and agreed that all grievances pending arbitration on the effective date of such termination shall continue to be processed pursuant to this Letter of Agreement.

The original document was signed by Steve DiCroce on 4/20/10 and James McLaughlin on 4/23/10.

## LETTER OF UNDERSTANDING between FRY'S FOOD STORES, INC.

#### and

## UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

## MULTIPLE ASSISTANT STORE AND DEPARTMENT MANAGERS

Fry's Food Stores and UFCW Local No. 99 hereby agrees as follows

The following provisions apply only to the Food Store Agreement:

- a) Two (2) assistant store manager(s) may be employed in each of the retail store or stores of the Employer. If the Company determines a third (3<sup>rd</sup>) excluded assistant manager is needed in a store, such assistant may be assigned if, in the preceding twelve (12) month period, the store ranked in the top twenty percent (20%) of stores in total store sales per week provided that such store averaged at least \$700,000 per week during such twelve (12) month period. Excluded assistant store managers may perform bargaining unit work on the same basis as an assistant store manager is permitted to perform such work under the current collective bargaining agreement. The third (3<sup>rd</sup>) excluded assistant manager will not adversely affect bargaining unit hours.
- b) An additional Grocery Department Manager and an additional Front-End Manager may be employed in a store that in the preceding twelve (12) month period, the store ranked in the top fifteen percent (15%) of stores in total store sales per week provided that such store averaged at least \$700,000 per week during such twelve (12) month period. The additional Grocery Department Manager or additional Front-End Manager will not adversely affect Bargaining Unit hours.
- c) The Company may employ additional excluded department managers in the Departments other than Grocery and the Front End for purposes of training new department managers for a period not to exceed eight (8) weeks for each additional excluded department manager. Such additional excluded department managers shall be limited to no more than two (2) per district per department manager classification at any one time.
- d) Employees assigned to the assistant store manager-training program (MD1) are assigned to the office and not a store; therefore such candidates shall not be counted against the limitation provided herein.

e) The parties agree that in implementing the provisions of this Agreement that employees currently classified as assistant store managers and/or department managers in excess of the numbers permitted under this Agreement shall continue to be retained in the current position, except that no new employee shall be assigned until the total number of permitted management employees for the specific position has fallen below the number permitted by this Agreement.

The original document was signed by Steve DiCroce on 4/20/10 and James McLaughlin on 4/23/10.

## LETTER OF UNDERSTANDING between

## FRY'S FOOD STORES, INC.

#### and

#### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

### UNION ACCESS TO ORIENTATION

Fry's Food Stores and UFCW Local No. 99 hereby agree to as follows:

1) The Employer agrees to allow the Union Representative to attend its new hire orientation training session for the strict purpose of membership recruitment. The Union Representative will read a prepared letter signed by both Local 99 President and Fry's President and distribute such letter to the attendees. The Union Representatives will then explain Union membership and sign employees into the Union. The presentation will occur at the beginning of the orientation session and should last no more than 10 minutes. In no event will the trainer speak about the Union Representative, except the Company may show employees its standard orientation video prior to the Union Representative's visit (if the Union Representative has not arrived by the start of the session).

The Union representative will speak in a non-inflammatory tone, be factually accurate and will be neutral to management. The Union understands that some new hire orientations are conducted on an individual employee basis at store level on an impromptu basis by store management. When an employee has his orientation provided in that manner, store management will make a good-faith effort to introduce that employee to the Union Representative during the next service visit. Union officials attending orientation class will be expected to comply with the time limits provided herein and to conduct themselves in an appropriate manner. The Fry's representative will also conduct themselves in an appropriate manner during all times with the Union representative and remain "neutral or better" during the presentation. In addition, the Fry's representative will not "unduly" delay the presentation by the Union Representative. In the event a union official fails to conduct himself in an appropriate manner management shall advise the Union President of such conduct.

Only in cases where the new employee orientation for a new (non-represented) store at a location not covered by a Collective Bargaining Agreement with UFCW Local 99 and only attended by new employees for a non-recognized store, Local 99 Representatives will not attend. This paragraph would not apply if employees from recognized stores were in attendance at that orientation.

The original document was signed by Steve DiCroce on 4/20/10 and James McLaughlin on 4/23/10.

# LETTER OF UNDERSTANDING between FRY'S FOOD STORES and

## UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

An All Purpose Clerk (A.P.C.) who assumes the position of Head Cutter and later voluntarily or involuntarily leaves the position and who has been in the position less than 9 months will be returned to the previously held A.P.C. position, with the seniority date adjusted by the amount of time in the meat position. The associate will be placed at A.P.C. rate paid prior to the move to Head Cutter and the appropriate work status (part time or full time) in accordance with contract provisions.

An A.P.C. who has been in the position of Head Cutter in excess of 9 months and who voluntarily or involuntarily steps out of the position will assume the position of Meat Cutter with the pay established based on hours worked as a Head Cutter or Meat Cutter. Work status (part time or full time) will be established in accordance with contract provisions.

Signed Date

Date

## LETTER OF AGREEMENT PHARMACY TECHNICIANS

Effective October 28, 2012, Fry's Food and Drug Stores and UFCW Local No. 99 hereby agree to the following modification to the collective bargaining agreements in Arizona.

1. Effective October 28, 2012, Certified Pharmacy Technician hired on or after June 20, 2004 shall cease to receive the hourly premium and the parties agree to establish a separate rate schedule for All Purpose Clerks working as non-certified technicians and certified technicians in the Pharmacy Department who were hired on or after June 20, 2004 as follows:

All Purpose Clerks working in the Pharmacy Department (employees hired or assigned on or after June 20, 2004)	<u>10/28/2012</u>	<u>10/27/2013</u>	<u>10/26/14</u>	<u>10/25/15</u>
1st 1040 hours worked	\$10.45	\$10.45	\$10.45	\$10.45
Next 1040 hours worked	\$10.95	\$10.95	\$10.95	\$10.95
Next 1040 hours worked	\$11.45	\$11.45	\$11.45	\$11.45
Next 1040 hours worked	\$12.55	\$12.55	\$12.55	\$12.55
Next 1040 hours worked	\$13.25	\$13.25	\$13.25	\$13.25
Next 1040 hours worked	\$14.43	\$14.43	\$14.43	\$14.43
Next 1040 hours worked	\$14.80	\$14.80	\$14.80	\$14.80
Thereafter	\$15.05	\$15.30	\$15.55	\$15.80

Certified Pharmacy Technicians hired on or before June 19, 2004 shall continue to receive their current rate, which includes the Certified Pharmacy Technician Premium, plus any negotiated contract rate increases.

Certified and Non-Certified Technicians hired on or after June 20, 2004 shall be placed into the new schedule to the rates that match their existing rate, if applicable and shall be credited with hours worked in their current progression rate toward progression in the new schedule. If the same rate does not exist in the new structure, then the employee shall be moved to the next highest rate in the new schedule and such employee shall be expected to work the hours of that step before progressing to the next step. However, certified technicians shall not be placed into the progression schedule at a rate below the 4<sup>th</sup> step.

2. Non-certified technicians shall not progress beyond the 4th progression step. The starting rate/progression for newly certified technicians, or those hired off the street, shall be the 4<sup>th</sup> progression step. A non-certified technician who becomes certified and who is working at a progression step below the 4<sup>th</sup> progression step shall be immediately advanced to the 4<sup>th</sup> progression step and shall be required to work all hours of that step before progressing to the next step. All other non-certified technicians who become certified shall continue to progress up the wage scale based on hours worked in each step, except for those non-certified technicians who are being paid at the 4<sup>th</sup> progression step and who have worked 1,040 or more hours at the step shall be advanced to the 5<sup>th</sup> progression step and shall be required to work all hours of that step before progressing to the top rate. Any advancement in progression resulting from achieving certification shall occur on the first Sunday following notice of certification, by the technician, to the Fry's Director of Pharmacy.

- 3. Non-Certified Pharmacy Technician and Certified Pharmacy Technicians, though paid on a separate Pharmacy Tech rate schedule, shall be considered as an All Purpose Clerk but as a separate department for all purposes covered under the collective bargaining agreement including promotion to full time, scheduling, layoffs, reduction of hours, etc. With respect to layoffs, non-certified technicians shall be considered less senior to certified technicians.
- 4. Any employee hired into, or assigned to, the classification of Pharmacy Technician must take the State of Arizona authorized pharmacy technician certification exam prior to their 12th month of hire or assignment as a pharmacy technician. If the technician fails this certification exam, then the technician <u>must</u> take the next scheduled certification exam following notification of the failure of the first exam. If the technician fails the retest, then the technician may be demoted to another APC assignment in a different department at the appropriate APC pay rate on the non-pharmacy technician pay scale. Hours worked as an APC assigned as a pharmacy technician will be counted toward pay progressions in the APC pay schedule.
- 5. Any pharmacy technician, who is currently classified as a Pharmacy Technician and has been employed, as a pharmacy technician in excess of eight months, <u>must</u> take the next scheduled certification exam. If the technician fails this certification exam, then the technician <u>must</u> take the next scheduled certification exam following notification of the failure of the first test. If the technician fails to take the initial exam or fails the re-test, then the technician may be demoted to another APC assignment in a different department at the appropriate APC pay rate on the non-pharmacy technician pay scale. Hours worked as an APC assigned as a pharmacy technician will be counted toward pay progressions in the APC pay schedule.
- 6. Any technician, who on the effective date of this amendment, has taken and failed two or more certification exams, will be allowed at their expense, to take the next scheduled certification exam. If the technician fails this exam, then the technician may be demoted to another APC assignment in a different department at the appropriate APC pay rate on the non-pharmacy technician pay scale. Hours worked as an APC assigned as a pharmacy technician will be counted toward pay progressions in the APC pay schedule.
- 7. Upon certification, all certified pharmacy technicians must maintain certification. The certified technician must present an updated copy of their renewed certification to the Director of Pharmacy not later than 90 days following the expiration of their most recent certification. In the event that a certified pharmacy technician fails to maintain certification, then the employee may be demoted to another APC assignment in a different department at the appropriate APC pay rate on the non-pharmacy technician pay scale. Hours worked as an APC assigned as a pharmacy technician will be counted toward pay progressions in the APC pay schedule.

### FOR THE EMPLOYER

### FOR THE UNION:

Stephen J. DiCroce Regional VP of Labor Relations James J. McLaughlin President

Date

# LETTER OF UNDERSTANDING Between

## **FRY'S FOOD STORES**

#### and

### UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

### ALL PURPOSE CLERKS (APC) ASSIGNED AS STORE ADMINISTRATIVE SUPPORT (ASP)/Store Secretary

The below wage schedule will apply to employees designated to fill the position by Management. APCs in this position will exercise their seniority in the ASP assignment only.

The wage scale is effective October 28, 2012. Employees will have their current wage adjusted to the new schedule to the rate closest to their current rate but reflecting an increase. Employees not at the "thereafter" rate shall progress based on hours worked to the "thereafter" rate. Any employee who leaves this ASP position will have their pay adjusted to the standard APC rate:

	\$13.00	780 Hours
	\$13.75	780 Hours
	\$14.50	780 Hours
	\$15.25	780 Hours
	\$16.25	Thereafter
Effective 10/27/13	\$16.50	Thereafter
Effective 10/26/14	\$16.75	Thereafter
Effective 10/25/15	\$17.00	Thereafter

Any negotiated wage increase will be applied to "thereafter" rate for this assignment.

### FOR THE EMPLOYER

### FOR THE UNION

Stephen J. DiCroce Regional VP of Labor Relations

Date

James J. McLaughlin President

Date

Donna Tanori Director, Human Resources

Date

James W. Nygren Director of Labor Relations

### LETTER OF UNDERSTANDING

#### Between

### FRY'S FOOD STORES

#### and

### UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

### ALL PURPOSE CLERKS (APC) ASSIGNED AS A STORE BOOKKEEPER

The below wage schedule will apply to employees designated to fill the position by Management. APCs in this position will exercise their seniority in the Bookkeeper assignment only.

The wage schedule is effective with hours worked beginning February 3, 2013. Employees will have their current wage adjusted to the new schedule to the rate closet to their current rate but reflecting an increase. Employees not at the "thereafter rate. Any employee who leaves this APC/Bookkeeper position will have their pay adjusted to the standard APC rate. Anyone assigned to fill-in for the bookkeeper for more than one (1) week will receive the appropriate "thereafter" rate:

	\$13.00	780 Hours
	\$13.75	780 Hours
	\$14.50	780 Hours
	\$15.25	780 Hours
	\$16.25	Thereafter
Effective 10/27/13	\$16.50	Thereafter
Effective 10/26/14	\$16.75	Thereafter
Effective 10/25/15	\$17.00	Thereafter

Any negotiated wage increase will be applied to "thereafter" rate for this assignment.

### FOR THE UNION

### FOR THE EMPLOYER

James J. McLaughlin President James W. Nygren Director of Labor Relations

Date



March 29, 2013

Jim McLaughlin UFCW Local 99 2401 North Central Avenue, 2nd Floor Phoenix, Arizona 85004 Revised

#### Dear Jim,

This is a follow-up to our phone discussion today on the matter outlined below.

#### Store 673, Opening of the Elevate Bar & Grill:

This is a sit-down restaurant seating approximately 40 customers. Fry's will staff this facility with qualified All Purpose Clerks (APC) of legal age who have acquired a food handler's certificate and alcohol handling certification. We will be adjusting APCs working in this operation by paying a premium of \$1.00 for hours worked in the grill. The APC associates acting as servers are not allowed to accept tips. All tips will be given to the designated company charity at the time, as we current'y do in our coffee shops. Fry's will be reviewing this operation to determine if modifications will be needed with our staffing model and related compensation. Any changes that may be necessary and desired will be reviewed and discussed with you prior to making the changes. I would expect that we will be able to determine what modifications may be needed within the next 30-60 days.

#### Certified Pharmacy Technician:

Fry's will be modifying the time limits set forth in the Letter of Agreement entered into in October 2012 and effective October 28, 2012. The modification will allow associates in the technician classification on the date the agreement was signed until December 31, 2013, to get their required certification. Additionally, associates hired or assigned to the Pharmacy Technician position after October 28, 2012 will have one year from the date they start in the Technician position to achieve their certification. (Certified Technician Classification)

Please let me know if you have any questions on these matters.

Sincerely,

Jen Kygn

500 South 99th Ave. Tolleson, AZ 85353 - (623) 936-2100



# Letter of Understanding between FRY'S FOOD STORES, INC And UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

Associates in leadership positions will be classified as full time status at the time they are promoted and will be scheduled accordingly. If the associate voluntarily or involuntarily leaves the position and has been in the position less than 2 years, they will be returned to their previous work status. The associate's pay rate will be determined by hours worked based on the current pay scale.

FOR THE UNION:

United Food and Commercial Workers Union, Local 99

Frederick Carter Grievance Director

Date

FOR THE COMPANY:

Fry's Food and Drug Stores

Lnda r 20

Linda Mealev Associate/Labor Relations Manager

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# LETTER OF UNDERSTANDING between

## FRY'S FOOD STORES, INC.

and

### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

# TEMPORARY DIVERSION OF 20¢ OF PENSION TRUST SUPPLEMENTAL CONTRIBUTION TO UFCW AND ARIZONA EMPLOYER'S HEALTH FUND

This letter is intended to solidify the understanding of our agreement to implement the terms of the current collective bargaining agreement between Fry's Food Stores and UFCW Local 99, allowing for the diversion of a portion of supplemental contributions currently paid by Fry's to Desert States Pension Trust (Pension Trust) to the UFCW and Employer's Arizona Health Fund (Health Fund) and is an extension of the letter originally dated November 9, 2011 and revised on August 30, 2012.

This action is following direction from the Pension Trustees.

The total dollar amount of the monies directed to the health fund will be equal to the dollar payment represented by the appropriate month's hours reported to the Pension Trust times  $20\phi$ . This diversion will continue through October 2016, unless the consultants for the Pension Trust deem it necessary to resume remitting the diverted  $20\phi$  to the Pension Trust at an earlier date.

### FOR THE COMPANY

Fry's Food and Drug Store

### FOR THE UNION

United Food and Commercial Workers Local 99

Stephen J. DiCroce Senior Director of Labor Relations James J. McLaughlin President

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

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

# LETTER OF UNDERSTANDING

# Between

# **FRY'S FOOD STORES**

# And

# **UNITED FOOD AND COMMERICAL WORKERS UNION LOCAL 99**

As part of the resolution reached in settlement of the pending arbitration scheduled for August 1, 2013, regarding the grieved change in working conditions/updated doctor's note policy: the Company agrees that it will re-establish the practice from prior to November 12, 2012. Suspicious or disputed absences will be dealt with jointly by the Company representative and the Union representative addressing the issue directly with the employee at the time of the absence.

This agreement in no way modifies the current collective bargaining agreement language on doctor's notes for sick pay, and is effective through the term of the current collective bargaining agreement.

This agreement settles and resolves the matter scheduled for arbitration on August 1, 2013 and all issues contemplated therein, including all outstanding grievances filed in 2012 and 2013 concerning the Company's implementation of the updated doctor's note policy.

Signed

Signed

Date

Date

## LETTER OF UNDERSTANDING

### between

### **FRY'S FOOD STORES**

and

# UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

Employees interested in becoming a Certified Wine Steward (CWS) can apply for the position of Wine Specialist. Employees selected for this position will remain classified as All Purpose Clerks during the training program leading to the CWS position. At the end of the training period of 90 days, the employees who successfully complete the training will be reclassified as a Certified Wine Steward at the established contract pay rate. Employees who do not successfully complete the required training process will return to the job duties performed and classification status prior to assignment to the program. If the employee voluntarily or involuntarily leaves the position and has been in the position less than 2 years, they will be returned to their previous work status and the employee's pay rate will be determined by hours worked based on the current pay scale.

During the assignment to the Wine Specialist training program, the employees will be paid the "thereafter" APC pay rate for those hired after December 10, 2009 as outlined in the current contract plus an adjustment of \$1.00.

Date

# LETTER OF UNDERSTANDING Between FRY'S FOOD STORES And UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

In resolution of all individual grievances filed in 2013 (prior to the date of the signing of the Letter of Understanding) concerning the deletion of unused vacation hours earned in the 2012 anniversary year, the Company agrees to reinstate the vacation eligibility for those individuals (list of affected individuals attached). The reinstated vacation will be scheduled by management with a minimum 2-week notice to the employee. Any employee choosing not to take vacation time established by the store manager will lose that vacation time/eligibility.

Between the signing of this Letter of Understanding and December 31, 2013, the Company agrees to review any additional grievances related to this matter which may be presented by Local 99. Resolution of these additional grievances will be dependent on the facts and merits of each grievance.

All vacation earned for 2012 anniversary dates occurring after the signing of this Letter of Understanding and not yet scheduled will be scheduled by the store manager to be taken as soon as possible.

The Company will follow the vacation selection process outlined in Article 7(Vacation), Vacation Selection, for the 2014 vacation selection process.

### Letter of Understanding between Fry's Food Stores and United Food and Commercial Workers Union Local 99

## Kroger Personal Finance (KPF) Pilot

Associates who are interested will apply for the "salesperson" positions involved and will be chosen by Kroger Personal Finance (KPF). Positions will be either part-time or full-time.

Associates selected will be placed on a separate schedule and not reflected on the stores' schedules. However, if hours are available (not claimed by store associates) in their home store and a KPF salesperson is interested in working these hours, they can follow the "additional hours" procedure outlined in the labor agreement.

During the assignment to the KPF position, hours worked will not be considered for the "12 weeks at 40 hours" provision of the contract.

Any associate chosen for the KPF position that is currently in a bargaining unit position will remain covered by the terms of the contract (medical benefits, pension, wages, etc.) during the pilot. If a KPF chosen associate elects to return to a store position prior to the conclusion of the pilot or if a KPF associate is deemed not to be meeting the KPF standards, they will return to a store position and continue to follow the provisions of the labor agreement. The associate, if requested, will return to their previous store and position.

At the conclusion of the KPF pilot, a decision will be made by KPF, Kroger and Fry's as to whether the program will continue, be expanded or discontinued. The decision will be discussed with Local 99 once made.

FOR THE UNION:

FOR THE COMPANY:

United food and Commercial Workers Union Local 99

Date

Fry's Food Stores

# LETTER OF AGREEMENT

# Between

# FRY'S FOOD STORES, INC.

# And

# UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

# MINIMUM WAGE

Effective December 28, 2014, in the event the State or Federal minimum wage increases during the term of this Agreement to a rate greater than the starting rate, the new rate will be a least twenty cents (\$0.20) above the minimum wage and each rate above will be at least ten cents (\$0.10) higher than the previous rate in the progression schedule. There will be no "backfilling of hours".

This Letter of Agreement expires on October 29, 2016.

# FOR THE EMPLOYER

FOR THE UNION

Stephen J. DiCroce Regional VP of Labor Relations James J. McLaughlin President

Date

Date

Donna Tanori Director, Human Resources

Date

James W. Nygren Director of Labor Relations

### LETTER OF AGREEMENT

### Between

### FRY'S FOOD STORES, INC.

#### And

### UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 99

#### **CLARIFICATION OF PENSION CONTRIBUTION LANGUAGE**

Clarify pension contribution language as follows: This understanding and provision will be effective on the first Sunday in January 2015. The parties agree that contributions to the Desert States Pension Plan are limited to forty (40) straight-time hours per week and two-thousand eighty (2080) straight-time hours per year for those employees on whose behalf contributions are due, except that contributions for vacation hours are not subject to the forty (40) straighttime hour cap (this exception does not include contributions for vacation hours paid upon termination from employment). With regard to Smith's or Fry's pension contribution obligations for the period of time up to the effective date of this understanding and provision, the parties agree that the 2012-2014 and prior collective bargaining agreements shall be interpreted to include a forty (40) hour per week cap on pension contributions with no exception for vacation pay. Miller Kaplan Arase will be advised that this interpretation applies to the Smith's/Fry's Pension audits that have been or may be performed for any period of time prior to the effective date of this understanding and provision. Additionally, Section 24(a) Contribution Rates, of the Agreements will be clarified with the following sentence: "Effective the first Sunday in January, 2015, fixed hourly contribution rates shall be made on behalf of employees up to forty (40) straight-time hours per week and two-thousand eighty (2080) straight-time hours per year as follows based on hours from the preceding month, except that contributions for vacation hours are not subject to the forty (40) straight-time hour cap (this exception does not include contributions for vacation hours paid upon termination from employment).

# FOR THE EMPLOYER

Stephen J. DiCroce Regional VP of Labor Relations

Date

FOR THE UNION

James J. McLaughlin President

Date

Donna Tanori Director, Human Resources

Date

James W. Nygren Director of Labor Relations