

**FOOD MAXX COLLECTIVE BARGAINING**

**AGREEMENT**

**BETWEEN**

**UFCW LOCALS 8, GOLDEN STATE, 120, 373R, 428, 839,870,  
AND 1179**

**AND**

**FOOD MAXX  
(A DIVISION OF SAVE MART SUPERMARKETS)**

**August 11, 2006**

**FOOD MAXX COLLECTIVE BARGAINING AGREEMENT  
BETWEEN  
SAVE MART SUPERMARKETS  
AND  
UNITED FOOD AND COMMERCIAL WORKERS LOCALS 8, GOLDEN STATE, 120,373, 428,  
839, 870, AND 1179  
2005-2011**

This Food Maxx Collective Bargaining Agreement (the "**Agreement**"), is made by and between Save Mart Supermarkets, d.b.a. Food Maxx (hereinafter called "**Employer**") and the United Food and Commercial Workers Union Locals 8, 120, 373, 428, 839,870, and 1179 Golden State (hereinafter called "**Union**").

**INTRODUCTION**

Union and Employer enter into this Agreement with the mutual understanding that fostering and promoting harmonious labor-management relations is of the utmost importance to Employer's success and the welfare of employees. This Agreement lays out some basic ground rules for those relations, but each side recognizes that the only way to have a successful relationship lies not in the words on a piece of paper but in the interaction and good will between the parties who have put their names to that paper. To that end, Union and Employer agree to seek out new ways to work with each other, whether spelled out in this Agreement or not, in order to promote the effective, efficient, and profitable operation of Employer's business as well as dignity and respect for all of Employer's employees.

**ARTICLE 1**

**GENERAL**

**A. UNION RECOGNITION, MEMBERSHIP, ETC.**

**Section 1. Recognition.** For the purpose of collective bargaining with respect to rates of pay, hours of work, and other terms and conditions of employment, Employer recognizes Union as the exclusive representative of all regular employees, full-time and part-time, working in Employer's current Food Maxx retail food stores within Union's geographical jurisdiction. The Union's various geographical seniority areas are shown on the Seniority Areas Addendum attached to this Agreement. Employer's recognition excludes, however, the following positions (whether known by these titles or such other titles as Employer may now or later give to such positions): Store Manager, Assistant Store or Grocery Manager, Second Assistant Store or Grocery Manager, Center Store Manager, Assistant Grocery Manager, Meat Manager, Produce Manager, Bakery Manager, and Front-End Manager, as Employer may choose additionally, the following categories of employees are excluded: custodians, clerical employees, confidential employees, security personnel, and supervisors as defined in the Labor/Management Relations Act.

**Section 2. Additional Facilities.** New Food Maxx stores in the above-mentioned geographical areas will be included in the bargaining unit covered by this Agreement if, after a forty-five (45) day period following such a new store opening for business, Union is able to confirm its majority status by a showing of cards with confirmed signatures of over fifty percent (50%) of the employees in the bargaining unit indicating their desire to grant Union exclusive bargaining rights. The parties will utilize the services of an impartial party to authenticate Union's claim to majority status.

### **Section 3. Unit Work.**

The work covered by this Agreement shall be performed only by members of the appropriate unit as defined in Section 1, above. This work consists of all work and services related to the handling or selling of all merchandise offered for sale to the public in Employer's retail food stores, but excluding:

- a. Work performed by those persons listed in Section 1 as excluded from the unit;
- b. Work performed for a period of 15 days after the date on which Employer certifies that Union has been recognized as the bargaining agent for employees located at a new Food Maxx retail food store;
- c. Outside service merchandisers, service drivers, driver salesmen and rack jobbers handling their own product in accordance with past or present Employer practice; and
- d. Demonstration work.

If Employer establishes a new department or creates new work in stores covered by this Agreement, Employer will meet and discuss with Union whether such work should be included in the bargaining unit. If it is determined that such new work should be included, the parties will meet to determine the appropriate pay.

### **Section 4. Employment and Union Membership.**

- a. **Membership:** On the later of the 30th day after the first day of employment or the effective date of this Agreement, all employees hired by Employer will become and remain a member of Union as a condition of employment. For purposes of this Section, tender of Union's periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in Union will be considered membership in Union. If an employee fails to meet or maintain these membership requirements, however, Union will notify both Employer and the employee of the employee's failure to do so. If after receiving such notice the employee fails to tender the dues or fees as the case might be by the seventh (7<sup>th</sup>) day after the notice is postmarked or personally delivered, Employer will terminate the employee unless Union notifies Employer in writing before the effective date of the termination that the employee has complied; provided, however, Employer has no obligation to discharge any employee in violation of the National Labor Relations Act, as amended.
- b. **Reinstatement:** If Union discovers within thirty (30) days after the date on which Employer discharges an employee as described in a, above, that the discharge was in error, Union will so notify Employer in writing and provide Employer with bona fide evidence that Union's termination demand was improper. Employer will then reinstate the employee with full seniority on the first weekly schedule posted by Employer after being so notified by Union.
- c. **Indemnification:** Union will indemnify Employer against, and hold Employer harmless from, any and all claims and/or causes of action that arise out of or are in anyway connected with Employer's compliance with this provision.

### **Section 5. Dues Check off.**

- a. **Withholding:** An employee may voluntarily authorize Employer in writing to withhold weekly dues, initiation fees, and political contributions from his or her wages. After Employer has received this written authorization and made the necessary changes to the employee's payroll record to account for the deductions, Employer will begin to deduct as directed. Employer will

transmit the deductions to Union's office by no later than the 15<sup>th</sup> day of the month following the month in which the deductions are made.

- b. **Period of Authorization:** Once a decision to authorize deductions is made, the authorization is irrevocable for a period of twelve (12) months from the date it is made or until the termination of this Agreement, whichever happens first. If an employee wants to revoke his or her authorization, he or she must notify Union and Employer in writing no sooner than 20 days and no later than 10 days before the expiration of the current authorization period. If the authorization is not revoked as just described, the authorization shall be automatically renewed and be irrevocable for another period of twelve (12) months or for the period of the balance of the term of this Agreement, whichever is shorter.
- c. **Indemnification:** Union will indemnify Employer against, and hold Employer harmless from, any and all any and all claims or causes of action, damages, losses, liabilities, and the like that arise out of or are in anyway connected with the implementation of this provision or Employer's compliance with it. Employer agrees however, that it will immediately correct any errors in making deductions upon notification from Union, which may be telephonic but which will be subsequently confirmed in writing.

**Section 6. Store Visits.** Union's authorized business representatives are permitted to visit the stores covered by this Agreement and have free access to the employees during such visits for the purpose of conducting Union business; observing working conditions; asking employees about working conditions; recording complaints; and other matters concerning the enforcement of this Agreement. Each of Union's business representatives is only authorized to visit, however, if the visit can be done without interfering with the work of the employees and disrupting the workplace. Moreover, each business representative must conduct himself or herself in accordance with the rules generally applicable to people visiting Employer's Food Maxx stores to the extent these rules do not preclude the business representative from discharging his or her duties.

**Section 7. Store Representatives.** Employer recognizes Union's right to appoint store representatives. Employer agrees to schedule a paid day off for one (1) store representative, designated by Union, to attend an annual education meeting. The parties agree that such time shall not be considered time worked for purposes of overtime, benefit contributions, or other incidents of "time worked." Employer further agrees that the store representative will not suffer any loss in his or her normally scheduled hours in the week that he or she attends the meeting. Union acknowledges, however, that Employer's obligation is limited in that Employer cannot be put in the position of violating this Agreement or having to pay any penalty for improper scheduling. To help make certain no problems arise, Union agrees to notify Employer in writing at least seven (7) days before the posting date of the schedule for the week in which the meeting will occur. Union should send the notice to Employer's Director of Employee and Labor Relations.

**Section 8. Union Bulletin Board.** Union may supply each store with a glass-enclosed bulletin board not exceeding three (3) feet by two (2) feet-six inches in size for the purpose of posting notices of official Union business. All non-routine materials to be posted on the bulletin board must be approved by Employer's Director of Employer & Labor Relations. Under no circumstances may bulletin boards be used to post notices of a political or adversarial nature. Employer's Director of Employee and Labor Relations will coordinate the implementation of this program.

**Section 9. Union Store Cards.** In consideration of the performance of the covenants herein contained, Union agrees to lend Union Store Cards and/or Decals to employers entitled hereto under the rules subject to Employer receiving a copy of such rules governing Union Store Cards set forth in the Constitution of the United Food and Commercial Workers International Union. Employers who request and are entitled to Union Store Cards and/or Decals and accept them agree to display them in a public space in their stores. It is understood that such Union Store Cards and/or Decals are issued by and remain the property of the United Food and Commercial Workers International Union, and Employer agrees to surrender said Union Store Cards and/or Decals at Union's request upon its

failure to observe the terms of this Agreement or the conditions under which said Store Cards and/or Decals are issued.

**Section 10. New Employees; Individual Agreements; Notification.**

- a. **CBA Coverage; Consideration:** During the period in which a new employee is not a Union member, the terms of this Agreement will nevertheless apply to his or her employment to the extent applicable. In recruiting employees for Food Maxx stores covered by this Agreement, Employer agrees to give due consideration to persons referred directly by Union. Employer has the final decision in choosing between qualified applicants.
- b. **Individual Arbitration Agreements:** Employer may enter into agreements with new employees for arbitration of statutory discrimination claims and other claims for which the grievance procedures of this Agreement are not the exclusive remedy. These agreements will comply with all state and federal law governing arbitration agreements of this nature.
- c. **Notification:** Employer will promptly notify Union in writing of the name, address, social security number, date of hire, store location, and job classification of newly hired employees. Union agrees, however, that Employer need not give it any such information if doing so would conflict with the law.

**Section 11. Use of Certain Words; Gender.** Whenever the words "employee" or "employees" are used in this Agreement, they designate only such employee or employees as are covered by this Agreement unless specifically stated otherwise. Whenever the masculine version of work is used in this Agreement, it will be deemed to include the feminine and vice versa as the context might require.

**B. MANAGEMENT RIGHTS**

In accordance with all applicable law, Employer retains, solely and exclusively, all rights, powers, and authority to manage its business, in all its phases and details, in the manner in which it sees fit to do so, except as such rights, powers, and authority may be specifically mitigated, modified, or prohibited by the express provisions of this Agreement.

**C. JOINT LABOR MANAGEMENT COOPERATION**

**Section 1. Workers' Compensation.** Union and Employer agree that it is very important to Employer's business that employees who are hurt on the job have their injuries handled fairly, thoroughly, and quickly so that they may either return to work or leave as the injury and its resolution might dictate. Union and Employer further agree that there may be better ways to achieve those ends than under the California statutory scheme for workers' compensation. Therefore, and as permitted by and consistent with California state law, Union and Employer agree to meet to discuss changes to the manner in which Workers' Compensation Benefits are provided to the employees covered by this Agreement. These changes may include the adoption by separate agreement of an Alternative Dispute Resolution system and providing workers compensation benefits through established, or newly created, Taft-Hartley funds.

**Section 2. Regular Meetings.** Union and Employer agree that they and their representatives working in the stores covered by this Agreement will meet as a group no less frequently than quarterly. The exact agenda of each quarterly meeting, where they are to be held, and the like will be left to the appropriate Union and Employer representatives. Union and Employer will discuss issues that are of concern to each in the ongoing operation of Employer's stores covered by this Agreement.

**Section 3. Educational Program.** Union and Employer will annually and jointly participate in an educational program of some kind designed to enhance labor-management relations. The purpose of doing this is to help Union and Employer to see and approach the issues that might arise between them in new and different ways than they may have seen them in the past. The appropriate representatives of Union and Employer will decide what to attend and when.

## ARTICLE 2

### WORK SCHEDULES AND PAY

#### A. WORKTIME

##### **Section 1. Workweek and Payday; Hours of Work; Schedules.**

- a. **Posting; Return to Work:** Employer will post the work schedule no later than 12:00 noon on Thursday of the preceding week. Employer will post lunch hours on the weekly work schedule. An employee's failure to report to management before noon on Thursday after an authorized leave of absence or to report to management before noon on Thursday and provide a medical release after being released from a doctor's care will result in no scheduled hours the following week.
- b. **Workweek; Payday:** The workweek will be from Sunday through Saturday. Payday is Friday of each week. Union agrees that Employer may pay employees through a direct deposit. Employer will offer direct deposit on a voluntary basis, but Union agrees to encourage employees who are able to take advantage of it to do so.
- c. **Weekly Hours:** The basic workweek for employees classified as full-time employees will comprise five eight (8)-hour days for forty (40) hours per week. Fewer than forty (40) hours may be scheduled by mutual agreement or in the case of Meat Cutters, who are all full-time employees, the least senior Meat Cutter may be scheduled fewer than forty (40) hours if a forty (40) hour-schedule is unavailable. Employees who are classified as part-time employees, other than Clerks' Helpers, will have a basic workweek comprising no fewer than twenty-four (24) hours. Clerks' Helpers will have a basic workweek comprising no fewer than twenty (20) hours per week.
- d. **Split Shift:** Employer will not schedule employees for split shifts. If Employer does so, it must pay the premium described in Article 2,B, section 2.d.ii, below, which will be the sole remedy for violation of this provision. A split shift is a second shift in the same workday that starts sooner than ten (10) hours after the first shift. An employee's attendance at a mandatory store meeting on the same day following his or her shift shall not be deemed to constitute working a split shift.

**Section 2. Additional Available Hours.** Qualified part-time employees may request additional available straight-time hours within their classification on a store-by-store basis so long as they are available for the hours and have notified their Store Manager, in writing, of their desire for more hours. Qualified part-time employees who comply with the preceding sentence will be afforded additional available hours by seniority. Seniority will be applied first to eligible, available employees then working when the need to fill a shift or a portion of a shift arises. For purposes of this section, qualified means an employee has the knowledge, skills, and ability to do the job. Employer need not,

however, give additional available hours to an eligible employee if doing so will result in overtime or premium pay or violate any restriction the employee may have on his or her hours.

**Section 3. Breaks and Meal Period.** Employer will schedule employees for breaks and meal periods in accordance with state law. In accordance with state law, Employer may schedule up to a six (6) hour shift without a lunch period. Any scheduled or extended shift that is more than five (5) hours up to and including a six (6) hour shift shall not be subject to the overtime rate and shall include two (2) unscheduled ten (10) minutes breaks. If Employer extends a shift past five (5) hours and fails to make available either of such breaks, then all time worked past the fifth hour shall be at time and one-half until such break is made available.

## **B. PAY**

**Section 1. Straight-Time Hourly Rates of Pay.** Rates of pay for different classifications are set forth in Addendum A to this Agreement. The following paragraphs describe how employees may progress in some classifications and some restrictions on what certain classifications may do.

- a. Advancement of Food Clerks to Senior Food Clerks:** Food Clerks will be advanced to Senior Food Clerk vacancies only (i) at Employer's discretion or (ii) if the number of Senior Food Clerks regularly scheduled on a full time basis falls below 35% of the total number of Food Clerks and Senior Food Clerks in the particular geographic seniority area referenced in Article 1, A, section 1. Employer has no obligation to advance any Food Clerk to Senior Food Clerk unless he or she is qualified to perform the work, is available to work, and has completed at least 4,160 hours of work with Employer. If Employer hires Senior Food Clerks, they will not be counted in the ratio of Senior Food Clerks to Food Clerks until their seniority would justify them having attained that status.
- b. Rapid Advancement:** If employees are advanced more rapidly than called for by the progression schedules, future advancement will be mandatory only if called for by total hours, as opposed to hours at that progression step.
- c. Meat/Deli Clerks:** Meat/Deli Clerks are not to be assigned production meat cutting. Production meat cutting is to be done by a Meat Cutter.
- d. Clerk's Helper:** A Clerk's Helper may not stock or price merchandise except carry backs, operate cash registers, perform normal janitorial work, perform office work, face shelves, or break down loads. A Clerk's Helper may work in a higher classification and get paid the higher rate for time spent in the classification.
- e. Meat Cutter Helper:**
  - i. Defined:** A new classification is created "Meat Cutter Helper". A Meat Cutter Helper is an employee who performs Meat/Deli Clerk work and may be designated (one employee at each store location), to assist a Meat Cutter in the performance of his or her duties and, after required training, do Meat Cutter relief work during holidays, vacations, leaves of absence, sick days, or when a regular Meat Cutter employed with Employer is not available for work.
  - ii. Hours and Rate of Pay:** When a Meat Cutter Helper is assigned to perform Meat Cutter duties, an eight (8) hour guarantee will apply for that shift. The rate of pay shall be at the next highest Meat Cutter (see Schedule 1, full-time) hourly rate above the Meat Cutter Helper's current Meat Clerk hourly rate of pay. All hours worked will apply to step raises within both classifications. An employee may be classified as a Meat Cutter Helper for no more than twenty-four (24) months, after which time he or she will be offered an apprentice Meat Cutter's position or will be returned to a Meat Clerk position at his or her current Meat Clerk hourly rate of pay. All hours worked performing Meat Cutter duties will be credited at the time of promotion to the

Meat Cutter classification. No current or future Meat Cutter will be laid-off or reduced in hours because of the use of the Meat Cutter Helper classification.

**Section 2. Overtime; Sunday Pay; Holiday Pay; and Premium Hourly Pay.**

- a. **Overtime:** Employer must authorize any overtime. Overtime will be compensated as follows:
  - i. Hours worked in excess of eight (8) hours for one work day will be compensated at the rate of one and one half (1 1/2) times the straight time rate.
  - ii. Hours worked in excess of forty (40) hours per week will be compensated at the rate of one and one half (1 1/2) times the straight time rate.
- b. **Sunday Pay:** Work performed on a Sunday will be paid at one and one third (1 1/3) the applicable straight-time hourly rate. Clerk's Helpers hired after the date of ratification of this Agreement (circa 2006) will not, however, be eligible for any Sunday pay.
- c. **Holiday Pay:** Eligible employees who worked on one of the fixed holidays to which they are entitled as listed in Article 3, D, section 2, below, and who were hired before the ratification date of this Agreement (circa 2006), will be compensated at the rate of one and one-half (1 1/2) times the applicable straight-time hourly rate, plus applicable holiday pay. Eligible employees who worked on one of the fixed holidays to which they are entitled as listed in Article 3, D, section 2, below, and who were hired after the date of ratification of this Agreement, will receive a premium rate of one dollar (\$1.00) per hour in addition to their applicable straight-time hourly rate.
- d. **Premium Rates:**
  - i. If an employee is not given a meal period in conformity with State law, he or she will be compensated at the rate of one and one half (1 1/2) times the applicable straight-time hourly rate for time worked until the meal period is given.
  - ii. If an employee works a split shift, he or she will be compensated at the rate of one and one-half (1 1/2) times the applicable straight-time hourly rate for all hours worked before the expiration of ten (10) hours between shifts.
  - iii. A meat cutter brought in by Employer, referred by the meat union, will be paid \$1.50 above the appropriate rate of pay, except those hired as a regular employee by Employer.
  - iv. For clerks and clerk's helpers on Employer's payroll before the date of ratification of this Agreement (circa 2006), the following night premium will be paid: If a clerk works between the hours of 8p.m. and 4a.m. he or she will be paid a premium rate of \$.50 (fifty cents) per hour; and if a clerk's helper works between the same hours, he or she will be paid \$.25 (twenty-five cents) per hour. The foregoing provisions shall not apply to employees hired after the date of ratification of this Agreement (circa 2006). Instead, such employees, except Clerk's Helpers, shall receive twenty-five (25) cents per hour for all hours worked between 11 p.m. and 6 a.m. Clerk's Helpers hired after the date of ratification shall receive no night premium.
  - v. If an employee works the sixth (6<sup>th</sup>) day in a workweek, he or she will be compensated at one and one half (1 1/2) times the applicable straight time hourly rate of pay. The foregoing provision will not, however, apply if an employee is scheduled to work a sixth (6<sup>th</sup>) day in a workweek in order to complete a weekly schedule of 24 hours if the need to so schedule the employee is a result of accommodating the employee's scheduling requests.

**Section 3. Position Premium.** For certain job assignments, Employer pays a rate above the applicable straight-time hourly rate of the employee who has the assignment. These assignments and the premiums paid for them are as follows:

a. An employee who is a Senior Food Clerk or Meat Cutter at the experienced straight-time hourly rate of pay with the position of Night Crew Chief or 2<sup>nd</sup> Person (meat or produce) will receive one dollar (\$1.00) an hour above that rate. If an employee who is a Senior Food Clerk or Meat Cutter is below the experienced straight-time hourly rate of pay, he or she will be advanced 1040 hours in his or her progression.

An employee who is a Food Clerk at the experienced straight-time hourly rate of pay or the step immediately below such step for a part-time Schedule 1 employee with the position of Night Crew Chief or 2<sup>nd</sup> person (produce) will be advanced to the first step of the Senior Food Clerk/Meat Cutter rates. He or she will remain there for 1040 hours and then progress through the remaining full-time steps. If such an employee is below either of these two steps, he or she will, also, be advanced to the first step of the Senior Food Clerk/Meat Cutter rates. He or she will, however, remain there for 2080 hours and then progress through the remaining full-time steps. Any employee advanced to the full-time steps in accordance with either of the preceding sentences will count towards the required full-time ratio. If any employee so advanced is demoted, he or she will go back to the position, rate, and classification (hours will be applied to step progression) that he or she held before his or her promotion.

**Section 4. Incentive Pay.** Employer, at its discretion and with notice to Union, may institute non-contractual incentive programs with monetary or other rewards at any time. These programs may be modified or discontinued at Employer's discretion with prior notice to Union. This section does not apply to over scale wage rates.

## ARTICLE 3

### BENEFITS

#### A. HEALTH AND WELFARE.

**Section 1. Health and Welfare Plan:** Union and Employer hereby and adopt and agree to be bound by eh UFCW-Food Maxx Health Care Trust Agreement, attached hereto as Addendum B. During the term of the Agreement, Employer will pay an amount for the Save Mart Supermarkets Select Health Benefit Plan (herein "Plan") that is sufficient to maintain current health plan benefits (summarized in Health and Welfare Exhibit I), subject to the following:

- a) **Maximum Funding Amount.** Employer's average monthly cost will not exceed 90% of the average Industry Rate (herein "Maximum Funding Amount"), established by the Trustees of UFCW Bay Area Health and Welfare Trust Fund (currently \$5.51 per straight-time hour) and in effect during the term of this Agreement.
- b) **Annual Accounting.** Employer will provide Union with an annual accounting of Plan experience, including: employer costs and expenses and other income, plan expenses by benefit type, enrollment statistics and a report that details actual employer payments made compared to the Maximum Funding Amount. Separate Plan experience and accounting information will be maintained for Employees covered by this Agreement, except that stop-loss and certain administrative expenses shall be proportionately allocated to Employees covered by this Agreement and non-union employees who also participate in the Plan. The cost of the Plan for those employees covered under the terms of this Agreement shall include all applicable premiums, claims payments and reasonable administrative expenses, including sick leave benefits. To the extent that it is determined during each annual accounting that the Maximum Funding Amount exceeds the total expenses for the employees covered by this Agreement, the excess contribution rate will be banked by Employer and will be used in future years, if necessary,

during the term of this Agreement to maintain the current health plans benefits. Union is not entitled to information about the non-union employee experience or benefit information, except for those expenses that are proportionately shared.

**c. Contingency.** If an annual accounting reveals that Employer's payment level outlined above is not sufficient to cover the cost of current health plan benefits, Employer has the right to modify benefits, only to the extent necessary, to a level that can be supported by the Maximum Funding Amount. Employer is required to notify Union at least 90 days in advance, and covered Employees at least 30 days in advance, of any plan modifications that occur under this provision. The 90-day notice to Union will include the annual accounting (with Plan experience) most recent Plan experience and accounting information available at that time. The notice will also include detailed information about the benefit changes and expected financial impact of those changes.

## **B. SICK LEAVE.**

**Section 1. Accrual of Sick Leave.** Sick leave shall be earned at the rate of six (6) hours per month per calendar year. Part-time employees will earn sick leave on a pro-rata basis, earning six (6) hours for every 173 straight-time hours worked. Earned sick leave benefits are payable only after six (6) months of continuous service. Accumulated sick leave may not exceed 360 hours (45 days). Sick leave benefit payments will commence on the second day of the absence, unless hospitalized on the first day.

**Section 2. Accumulation; Pay Out.** An employee may accumulate up to 360 hours (45 days) of sick leave. On the first anniversary after which the accumulation exceeds 360 hours, an employee will automatically receive the difference between the accumulation and the 360 hours converted into cash at the rate of one hour's pay for each two hours of excess accumulation. Notwithstanding the foregoing, at no time will the excess pay out be greater than 36 hours in any calendar year. An employee is not entitled to, and there is no pay out of accrued sick leave on termination of employment or retirement of employment.

**Section 3. Verification; Integration.** Employer may require an employee to submit medical verification before distribution of sick leave benefits. Sick leave benefits will be integrated with Worker's Compensation and State Disability Insurance benefits so that the combined total does not exceed an employee's average weekly compensation, using the prior six (6) week period as a base.

**Section 4. Statement of Accrued Hours.** Employer will show an employee's accrued sick leave on each weekly pay stub as soon as it is technologically able to do so. Employer anticipates that no later than twelve (12) months after (ratification date) it will be able to do so, but this is not a guarantee that it will, in fact, be able to do so by then.

## **C. RETIREMENT.**

**Section 1. Employer Acceptance.** Employer agrees to accept and be bound fully by the terms of that certain Declaration of Trust dated April 1, 1957, providing for the UFCW – Northern California Employers Joint Pension Trust Fund (the "Trust Fund") as the same may be applicable to the Pension Plan therein provided for, and any amendments thereto. Employer hereby acknowledges receipt of a copy of said Declaration of Trust.

**Section 2. Employer Contributions.** Effective with hours worked September 2006 (or, if later, the first day of the month in which the benefit changes become effective, or if those changes become effective on a day other than the first day of the month, then the first day of the following month, this is referred to as the "contribution effective date"), Employer agrees to contribute to the Trust Fund for the term of the Agreement based on the following rates:

- a. One dollar and nine point two (\$1.092) per straight-time hour following the contribution effective date for Clerks
- b. One dollar and twenty cents (\$1.20) per straight-time hour effective for March 2007 hours
- c. For the remainder of this contract the contribution rate of \$1.20 will change in a consistent manner by the pro-rata portion ( $\$0.90 / \$1.17$ ) of the contribution rates changes negotiated in the next major agreements per straight-time hour
- d. Contributions for New Hires (defined as those hired on or after the ratification of this Agreement) will be 65% of the above stated contribution rates (the first contribution rate for New Hires will be \$0.71, effective with March 2007 hours the rate increases to \$0.78) per straight-time hour. The ratio used for pro-rata contribution increases for New Hires will be  $\$0.585$  divided by  $\$1.17$ .

The seven- (7) month deferral of contributions for accounting and actuarial purposes, first implemented for the Trust Fund's 1999 fiscal year, continues to be in effect.

Such contributions shall be made on all straight-time hours worked by all employees covered by this Agreement, including Sundays, and/or all hours compensated, such as vacations and holidays. Contributions shall be made on or before the 20<sup>th</sup> of the month for covered hours worked during the preceding calendar month. It is understood that the contributions required on behalf of any employee shall not exceed forty (40) straight-time hours per week or two thousand and eighty (2,080) straight-time hours in any calendar year.

An employee shall receive both vesting and benefit accrual credit for all hours compensated (including those for which no contribution is due to the Trust) to a maximum of forty (40) hours per week and two thousand and eighty (2,080) hours per year. For New Hires, their benefit accrual credits will not begin until they have met the eligibility requirements described below.

In the event that Employer is required to make any additional contributions above the negotiated contribution rates in order to avoid funding deficiencies, Employer will receive a dollar for dollar credit for additional contributions in any subsequent plan year where there is sufficient excess funding exceeding the minimum funding level required to offset the additional contribution provided this offset does not create a minimum funding deficiency the following plan year. In other words Employer payments in excess of the negotiated contributions will create future contribution suspensions that will be taken as soon as possible as long as the minimum funding concerns outlined above are met.

**Section 3. Terminal Vacation Pay.** Upon retirement no Trust Fund contributions will be required of Employer on terminal vacation pay made to an employee at retirement. The employee's retirement benefits will not be delayed, and he or she will receive credit for hours even though contributions are not required.

**Section 4. Prompt Payment.** The parties recognize and acknowledge that the regular and prompt payment of Employer contributions to the Trust Fund is essential to the maintenance of the Pension Plan, and inasmuch as beneficiaries under the Plan are entitled to pension benefits for the period of time that they may have worked while covered by the Plan, even though contributions have not been paid on their behalf by their employer, that it would be extremely difficult, if not impractical, to fix the actual expense and damage to the Trust Fund and Pension Plan which would result from the failure of an individual employer to pay such monthly contributions in full within the time above provided. Therefore, the amount of damage to the Trust Fund and Pension Plan resulting from any such failure shall be presumed to be the sum of twenty dollars (\$20.00) per delinquency, or ten percent (10%) of the amount of the contribution or contributions due, whichever is the greater, not to exceed the sum of one hundred dollars (\$100.00) per delinquency, which amount shall become due and payable to the Trust Fund as liquidated damages, and not as a penalty, upon the day immediately following the date upon which the contributions became delinquent, and shall be in addition to said delinquent contribution or contributions.

**Section 5. Benefits.** The Trustees, as defined in the Declaration of Trust referenced above, are authorized and directed to modify benefits in accordance with the following provisions, and otherwise in accordance with the provisions of this Agreement:

Effective September 1, 2006, future benefit accrual rates will be:

- a. For the first ten years of benefit credit the benefit accrual rate will be \$24.67
- b. For all years of benefit credit after the first ten years the benefit accrual rate will be \$32.58

The Trustees shall implement and maintain over time a Pension Plan design that can be supported by the contribution rates called for in this Agreement. The Trustees are further authorized and directed to make necessary amendments to avoid any funding deficiencies and otherwise in accordance with the provisions of any long-term funding policy for the Plan, that may be adopted by the Trustees.

The Trust Fund shall prepare and distribute an ERISA Section 204(h) notice, and any other required notices and filings, to Trust Fund participants in order to implement the above referenced changes by September 1, 2006.

The following additional changes will be implemented for New Hires:

- i. New Hires must be at least age 21 and have one year of service to meet the eligibility requirements for participation
- ii. For New Hires, one year of service for eligibility purposes is defined to be at least 750 hours of service
- iii. New Hires will be 100% vested after five years of service
- iv. For the first ten years of benefit credit the benefit accrual rate for New Hires will be \$16.04
- v. For all years of benefit credit after the first ten years the benefit accrual rate for New Hires will be \$21.18
- vi. New Hires will not be eligible for the Rule of 85 retirement benefits
- vii. New Hires normal retirement age will be age 65
- viii. New Hires early retirement eligibility will be age 55 with 5 years of service
- ix. New Hires who retire early (prior to age 65) will have their accrued benefits reduced on an actuarial equivalence basis

**Section 6. Application for Extended Amortization Extensions under Internal Revenue Code Section 412(e).** The Trustees shall cause the Trust Fund to apply for an amortization extension under Internal Revenue Code § 412(e).

In the event that the application under Internal Revenue Code § 412(e) is approved by the reviewing Government agency, the Trustees will adopt the following long term funding policy. In addition, the Trust Fund shall follow the recent guidance on how submit an application for amortization extensions under Internal Revenue Code § 412(e) including future changes that the Board of Trustees will have to consider (specifically future contribution increases as negotiated from time to time, future benefit reductions, or some combination of the two).

*UFCW – Northern California Employers Joint Pension Trust Fund  
Long Term Funding Policy*

*The co-consultants will produce with the annual actuarial valuations a seven-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(e)). These annual projections will be based on the following:*

- *Projections will take into account only negotiated contributions*
- *Using the assumptions and actuarial methods 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*

*If the annual projection indicates any future funding deficiencies during the seven-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.*

*In the event that the contributing Employers are required to make any additional contributions above the negotiated contribution rates in order to avoid funding deficiencies, the contributing Employers will receive a dollar for dollar credit for additional contributions. When the Board of Trustees reduces benefits to eliminate the future funding deficiencies it shall take into account that these contribution credits will be taken as reductions in the negotiated contributions in the next plan year. In other words the employer payments in excess of the negotiated contributions will create future contribution suspensions that will be taken as soon as possible and the Co-Consultants will reflect this with the annual seven-year projections.*

*In the event that the application under Internal Revenue Code 412(e) is denied by the reviewing government agency, the Trustees shall not be required to adopt the above long term funding.*

*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 no later than sixty (60) days following the Trust meeting in which the deadlock occurs*

**Section 7. Other Plans.** Employer retains the exclusive right to alter, amend, cancel, or terminate any presently existing company-sponsored pension plan or employee retirement plan that existed before the establishment of the Trust Fund; provided, however, that the effective date of such alteration, amendment, cancellation, or termination shall not occur before the acceptance of the Plan.

**Section 8. Regulations.** The Trust and the benefits to be provided from the Trust Fund and all acts pursuant to such Trust Agreement and the Plan shall

**Section 9. Business Expense.** It is understood that this provision for a pension plan is being entered into upon the condition that all payments made by Employer hereunder shall be deductible in the year in which the contribution is made as business expenses under the Internal Revenue Code as it presently exists or as it may be amended subsequent to the date of this Agreement and under any similar applicable state revenue or tax laws.

**Section 10. Limitation.** Employer's sole and only obligation shall be limited to the contribution requirements outlined in section 2 of the Article 3,C.

**Section 11. Legislation.** In the event of legislation requiring the restructuring of any of the essential elements of the Plan, including, but not limited to, the benefit formula, amortization period, actuarial assumptions, vesting, or administration of the benefits, the Trustees are instructed to comply immediately with such legislation in adjusting the elements on a sound actuarial basis with no change in the exiting Employer contribution rate.

**Section 12. Defined Contribution Pension Plan.** The Trustees have established a Defined Contribution Pension Plan and Trust effective March 1, 1987, in addition to and supplemental to the Pension plan described in this Section. Employer shall not have any obligation to contribute effective for September 2006 hours (or, if later, the contribution effective date as described in Section 2, above).

**Section 13. Use of Contributions.** Employer contributions shall be for the sole purpose of providing the pension benefits and for the administration of said program. The Trustees are not authorized to use any of the contributions or Plan assets for benefit improvements or any other purpose except as specifically provided here in section 13.

**Section 14. Operational Plan Rules.** The Trustees are instructed to follow these operational plan rules, and the Plan shall be amended as necessary to implement such rules:

- a. Where an employer is contributing at a rate that is less than the maximum allowed contribution level and later increases its contribution rate (but only up to the maximum contribution rate accepted by the Trust Fund), such increase will only increase future benefit accrual rates. Benefits accrued prior to the date that employer increases their pension contribution rate will not be affected, and will remain at the level based on the earlier employer contribution level.
- b. The Board of Trustees will instruct the co-consultants to look at situations such as, but not limited to if an employer attempts to decrease its contribution rate after a period of contribution suspension. Such review and approval shall include a consideration of whether the contribution rate is sufficient to support the benefits promised, as well as any subsidy or equity issues, all as may be identified by the Co-Consultants to the Fund.

#### **D. PAID TIME OFF.**

##### **Section 1. Vacations.**

- a. **Employees Hired Before Ratification:** Employees who were hired before the ratification date of this Agreement (circa 2006) will enjoy the following vacation schedule:
  - After 1 year of service - 1 week;
  - After 2 years of service - 2 weeks;
  - After 5 years of service - 3 weeks;
  - After 15 years of service - 4 weeks; and
  - After 20 years of service - 5 weeks.
- b. **Employees Hired On or After Ratification:** Employees hired after the date of ratification of this Agreement will earn vacation as follows: Employees who have been in Employer's service for one (1) year, twelve (12) consecutive months, will earn one (1) week of vacation with pay annually. Employees who have been in Employer's service for three (3) years, thirty-six (36) consecutive months, will earn two (2) weeks of vacation with pay annually. Thereafter, these employees will earn vacation with Employer in accordance with Section 4, a, i, above.
- c. **Scheduling Vacations:** Employer will post the available vacation dates for each classification by January 1<sup>st</sup> of each year. Selection of available vacation dates will be by seniority. The period during which vacations may be taken is between March 1<sup>st</sup> and November 1<sup>st</sup> of each calendar year, or at other times during the calendar year as Employer and the requesting employee might mutually agree. If an employee fails to exercise his or her vacation selection right by February 1<sup>st</sup>, or has lost his or her prior selection by reason of less seniority, the employee may select from the remaining available periods. The selection of vacation periods must be completed by March 1<sup>st</sup> of each year. If an employee fails to select his or her vacation by March 1<sup>st</sup>, Employer will assign that employee's vacation period to him or her. In all cases, Employer will give at least ten (10) days' notice of the date of vacation to each employee.

- d. **No Waiver:** An employee may neither waive vacations nor may an employee receive pay for work performed for Employer in lieu of taking earned vacation time. Vacations may not be accumulated from year to year. Notwithstanding the foregoing, if an employee does not use all of his or her vacation allotment during the year after the anniversary date of the employment year for which the vacation was earned, Employer will pay the value of the unused weeks of vacation to the employee on the employee's next anniversary date of employment.
- e. **Daily Vacation:** Employer will permit employees with at least four (4) weeks of vacation to use one (1) week of vacation in daily increments in any combination. For example, the employee may use one day of vacation five times; two days of vacation and then one day three times; etc. until the five days is exhausted.
- f. **Advance Vacation Pay:** Employees who are entitled to a vacation may request and receive their vacation pay allowance in advance immediately preceding the vacation.
- g. **Vacation Pay Computation:** For the purpose of computing vacation earnings for those employees that are eligible, two percent (2%) of the employee's W-2 earnings for the calendar year during which it was earned will be the amount paid for each week of vacation entitlement.
- h. **Holiday during Vacation:** When a holiday for the which an employee is eligible falls during the employee's paid vacation, such employee will receive a personal paid day off to be taken pursuant to the provisions of Section 2, d,below, regarding the selection of personal days off or will receive an additional day's vacation with full pay.

## **Section 2. Holidays.**

- a. **Fixed Holidays:** Employees who have completed their probationary period are entitled to the following fixed holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day.
- b. **Floating Holidays for Employees Hired Before Ratification:** Employees who were hired before the date of ratification of this Agreement (circa 2006) and who have completed their probationary period are entitled to three floating holidays as follows: employee's birthday, employee's employment anniversary, and one personal day.
- c. **Floating Holidays for Employees Hired On or After Ratification:** Employees who were hired after the date of ratification of this Agreement and who are probationary employees are entitled to paid floating holidays as follows. The employees will be entitled to the employee's birthday holiday on the employee's first birthday after completion of twelve (12) consecutive months of employment with Employer. The employee will be entitled to the employee's employment anniversary holiday and the personal holiday after thirty-six (36) consecutive months of employment with Employer.
- d. **Notification Regarding Floating Holidays:** Employees must notify Employer of their request to use any one of the floating holidays described, above, at least two (2) weeks before the requested dates. Employees may elect to take one (1) or two (2) days off separately or consecutively. Employee and Employer will mutually agree on the selected days. None of these holidays may be carried over from one year to the next.
- e. **Additional Floating Holidays:** Employees with at least twenty-five (25) years of service with Employer will receive two (2) additional floating holidays each year. The first holiday will be earned May 1 of each year, and the second holiday will be earned on September 1 of each year.

- f. **Staffing on Holidays:** If Employer elects to open on a holiday, Employer will staff the stores with volunteers if practicable. If more employees volunteer than are needed, Employer will schedule by seniority. If fewer employees volunteer than are needed, Employer will schedule employees based on inverse order of seniority. Employer does not currently intend to remain open on Christmas Day or after 7p.m. on Christmas Eve but may choose to do so in the future. If Employer does so, it will give Union at least thirty (30) days advance notice of its intention to do so in order for Union to be prepared to answer questions from members.
- g. **Right to Holiday Pay:** In order for an employee to be paid for a fixed holiday not worked, he or she must have completed his or her probationary period, must have worked the scheduled workday immediately before and immediately after the holiday (unless his or her absence was expressly permitted by Employer), and must have worked during the payroll period during which the holiday occurred.
- h. **Part-time Holiday Pay:** Employer will pay part-time employees who are eligible and qualify for holiday pay on a fixed holiday not worked an amount based on twenty (20) percent of the average weekly hours worked by the part-time employee during the six weeks immediately preceding the holiday.
- i. **Holiday Pay Out:** Employer will pay an employee for all earned floating holidays not taken within a calendar year at termination of the employee's employment or at the end of each calendar year, whichever occurs first.

**Section 3. Funeral Leave.** An employee may take up to three (3) consecutive days off with pay to attend the funeral or make funeral arrangements for members of his or her immediate family. Bereavement pay is calculated based on the employee's base pay rate at the time of absence, includes no special forms of compensation such as incentives, commissions, bonuses, or shift differentials, and, in the case of part-time employees, is based on 20% of the weekly average hours worked for the 6 weeks immediately preceding the absence. Employer may require appropriate supporting evidence of the funeral. For purposes of this paragraph, immediate family is defined as spouse, mother, father, son, daughter, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother, sister, grandparents, grandchildren, step-mother, step-father, step-son, or step-daughter.

**Section 4. Jury Duty.** An employee will tell Employer as soon as the employee knows that he or she is being called for jury duty. Employer will change the schedule of an employee on jury duty so that his or her shift begins at the time of reporting for such jury duty. Employer will reschedule an employee regularly scheduled for night work to a day shift for the period of jury duty service. To the extent that it is within Employer's reasonable control, the rescheduled work shift, when combined with time spent for jury service, is not to exceed a total of eight (8) hours in a day. Employer agrees that time spent in awaiting impaneling for jury service is to be considered covered time under this provision. Employer will pay employees their regular straight-time hourly rate of pay during such jury duty, less jury pay received. An employee who has jury duty will give Employer verification of his or her time spent and the fees paid to him or her. If Employer is unable to limit the daily number of hours to eight (8), the overtime rate of time and one half (1 1/2) times the applicable straight-time hourly rate of pay will apply for all time in excess of the combined total of eight (8) hours. An employee will immediately report for work after being excused from jury duty service, provided there is sufficient time remaining on the daily work schedule to work for at least two hours of the daily shift. An employee's failure to so report will render null and void any claim for jury service for that day.

**Section 5. Appearances.** If an employee appears in court, at the police department, or other venue to testify for Employer on his or her days off, the employee will receive his or her basic straight time rate of pay for the time spent in making such appearance, but such time shall not be considered as part of the work week under the terms of this Agreement.

**Section 6. Leaves of Absence.**

- a. **Personal Leaves.** Without loss of seniority, Employer will grant personal leaves of absence of up to 30 days for compelling reasons provided the employee has worked for Employer for at least twelve months and has worked at least 1248 hours at the time the request is made. The employee and his or her immediate supervisor will agree on the need for such leave and its terms. Employer will grant such leaves in writing.
- b. **Industrial Injury.** An employee incurring an industrial injury will be granted leave as provided by applicable state and/or federal law.
- c. **Non-industrial Injury.** Employees who exceed two consecutive weeks of absence due to non-industrial illness or injury will be administratively terminated, if said absence occurs within their first year of employment. A four (4) months leave will be granted in the first year of employment for disability due to pregnancy, which will run concurrently with any local, state, or federal leave that might be available for the same. After one (1) year of employment, a non-industrial illness or injury leave may be granted up to twelve (12) months within a rolling twelve (12) month period, at the end of which the employee will be administratively terminated. If an employee returns to work before the end of the 12month period but leaves again for the same illness or injury or one stemming from it or associated with it, such injury or illness will be considered the same as the first and counted toward the maximum twelve (12) month absence. In order to qualify for a non-industrial leave, Employer requires medical documentation that substantiates the inability to perform normal duties without restrictions. Employer reserves the right to require that non-industrial leaves be evaluated by a doctor selected by Employer, at Employer's expense, to determine the employee's ability or inability to perform normal duties with or without restrictions.

#### **ARTICLE 4: EMPLOYMENT ADMINISTRATION.**

##### **A. NO DISCRIMINATION.**

Neither Employer nor Union shall discriminate against any person in regard to hire, tenure of employment, or job status because of race, color, creed, religion, sex, sexual orientation, national origin, ancestry, age, physical or mental disability unrelated to the job duties, or veteran status.

##### **B. WORK RULES.**

Employer has established work rules for the operation of its Food Maxx retail stores. Employer has provided each of its employees and Union with a copy of these rules. From time to time, Employer may add to, eliminate from, or otherwise modify these rules. When Employer does so, Employer will notify all employees of the change and make a copy of the change available to all employees at the store. Additionally, either before any change is implemented or within 10 days after the implementation, Employer will notify Union of the change. When a change to the working rules is made, Union and Employer agree that it is the responsibility of each employee to familiarize himself or herself with the change. Employer agrees that its working rules will be

reasonable and will not conflict with the terms of this Agreement. Furthermore, Employer agrees it will make its work rules available in Spanish on an as needed basis.

### C. SENIORITY.

- Section 1. Basic Determination.** Seniority will apply, by classification, in the bargaining unit covered by this Agreement and will be based on the employee's original date of hire (or re-employment if a break in service has occurred) by Employer. For persons employed on the same date, the highest of the last four social security digits will decide priority. Seniority rights will not commence until after an employee has completed a probationary period of sixty (60) calendar days, after which time he or she will become a regular employee of Employer.
- Section 2. Seniority Lists.** Employer agrees to give Union a seniority list of employees semiannually. The list will show employees by seniority, listing the employee's date of hire, name, social security number, work location, classification, current rate of pay, and part-time or full-time status.
- Section 3. Scheduling.** If a full-time employee tells Employer of his or her desire for schedule changes, Employer will take into consideration seniority, by classification, when making schedule assignments, so long as the efficiency of the operation is not impaired. Employer will take into consideration length of service in scheduling part-time employees, with the most senior employees assigned to schedules with the most hours, so long as the efficiency of the business is not impaired.
- Section 4. Promotions.** Employer will post job openings for positions above clerks' helpers (except for movement into Senior Food Clerk or Meat Cutter) in its store or stores within Union's geographical seniority area for a period of seven (7) calendar days. In filling these openings, seniority will prevail, provided the employee has the qualifications necessary to do the job. Qualifications will include such factors as experience, job performance, aptitude, attendance, etc. When merit and ability are approximately equal, seniority controls in making the selection for the opening. Any successful candidate for a promotion who voluntarily declines the promotion will be ineligible for any subsequent promotional bid for a period of six (6) months.

Employer agrees to provide Union with a list of employees who have been promoted to positions above clerks' helper positions on a quarterly basis.

An employee selected for a promotion will serve a thirty (30) calendar day probationary period. During the thirty (30) day probationary period, Employer may disqualify the employee from the position for which he or she was selected if the employee fails to perform adequately the duties of the position for which he or she was selected or the employee may decide to reject the position for any reason. If there is a dispute over a disqualification, the dispute may be submitted to the grievance/arbitration procedure specified in Article 4, E of this Agreement. If the employee is disqualified from or rejects the position, she or he may return to her or his former classification at her or his former rate of pay with no loss of seniority. Furthermore, any discipline for failure to perform work as required that was received during the probationary period would be rescinded. Following the disqualification or rejection, the employee may not bid for the same position for a period of six (6) months following the date of disqualification.

- Section 5. Geographical Transfer.** When Employer transfers an employee from another area into Union's jurisdiction under this Agreement, the transferred employee will retain all seniority rights, but will not be entitled to exercise such rights with respect to layoff, recall, or promotion until the expiration of six (6) months after the date of transfer, at which time his or her seniority will be based upon the first day of employment by Employer, regardless of area. During such period of six (6) months, however, the transferred employee will accrue seniority rights in the new area from the date of transfer and will retain all seniority rights with respect to layoff, recall, and promotion in the area from which he was transferred. No employee is required to accept a permanent transfer outside Union's jurisdiction unless approved by the employee.

**Section 6. Layoff and Recall.** Seniority will prevail in the selection of employees who must be subject to layoff and will be eligible for recall.

- a. **Layoff.** If there is a layoff, the following procedures will be implemented:
- i. After all part-time hours in a classification that may be reduced to the minimum weekly guarantee, taking into consideration the needs of the business and the desire of employees for certain hours, have been reduced, the least senior full-time employee(s) being laid off may bump the least senior full-time employee(s) working in the same classification within Union's jurisdiction, except that the 2<sup>nd</sup> person in meat and produce and the night crew chief may not be bumped. (Schedule I has two classifications of employees. Schedule I full-time Senior Food Clerks/Meat Cutters and Schedule I part-time Food Clerk employees.)
  - ii. If the affected full-time employee elects not to bump (or is) the least senior full-time employee in his or her classification, he or she, at his or her option, may elect to take a temporary reduction to part-time, at the applicable rate of pay, in his or her store. Part-time employees may not be scheduled hours above the minimum while full-time employees are temporarily reduced to part-time unless unforeseen business needs arise, such as night crew shifts that cannot be filled otherwise. This will be based on his or her seniority and hours available for which he or she is qualified to work. If the employee does not make this election, he or she will be laid off.
  - iii. The least senior part-time employee(s) being laid off in the store may displace the least senior part-time employee in the same classification in the same manner as set forth in a.i, above.
  - iv. Other than an employee moving from the part-time clerk classification to the full-time clerk classification or from part-time to full-time within the same classification, when an employee transfers from one classification to another, the employee will retain all seniority rights with Employer but will not be entitled to exercise such rights with respect to layoff, and recall until the expiration of six (6) months after the date of transfer, at which time his or her seniority will be determined in accordance with Article 4C, section 1, above. If a layoff were to occur following a recent transfer (no more than six (6) weeks) between classifications, the employee would have the right to transfer back to his or her previous classification.
  - v. It is understood that in a layoff situation Employer, at its discretion, may layoff full time Senior Food Clerks according to the procedure set forth in a.ii, above, for the purpose of maintaining the thirty-five percent (35%) ratio of full-time employees described in Article 2,B, Section 1, a.
  - vi. Employer will not promote any employee, or hire any new employee, into a classification in which current employees are in layoff status (by which is meant either not working or taking a step down into a lower classification as described in a.ii, above) until those employees have been recalled or terminated as provided in Article 4.C, section 6.b, below.
  - vii. It is understood that a full-time employee accepting a part-time position in a layoff situation will be put on the top of the part-time schedule for the period of twelve months.
  - viii. An employee that has been laid off for a period of twelve (12) continuous months will be administratively terminated.

- b. **Recall.** The layoff procedure set forth above is to operate in reverse in recall situations, with the person(s) laid off or reduced in hours being able to reclaim his or her (or their) former position(s) by classification by seniority as it becomes (or they become) available. When an opportunity for reinstatement occurs, the employee shall present himself or herself within ninety-six (96) hours, excluding Sunday, from the postmarked date of a certified or registered letter to the employee's last know address. Such letter shall state that failure of such employee to present himself or herself within the ninety-six (96) hour period shall result in termination. Any employee that fails to present himself or herself within ninety-six (96) hours from the postmarked date of such letter will be administratively terminated. A copy of said letter will be sent to Union.

#### **D. WORK PERFORMANCE AND DISCIPLINE.**

If an employee's performance, conduct, or attitude does not meet Employer's standards or if an employee violates Employer's policies and procedures, Employer will take appropriate disciplinary steps.

**Section 1. Progressive Discipline.** Except as otherwise permitted, Employer agrees to use progressive discipline as described in the section.

- a. **Counseling.** Employer will orally counsel an employee in certain situations in an attempt to correct a deficiency or deficiencies or to obtain compliance with Employer's policies and procedures. In doing this, Employer will make clear to the employee the steps that must be taken to correct such deficiency or deficiencies or to become compliant.
- b. **Written Warnings.** In situations in which counseling is inappropriate or has already been tried, Employer will give a written warning to serve formal notice to an employee that the employee must immediately correct a deficiency or deficiencies in work performance or noncompliance with certain company policies and procedures. Again, Employer will explain to the employee what steps must be taken to correct such deficiency or deficiencies or to become compliant. Employer will file a copy of a written warning in the employee's personnel file and send a copy to Union. A written warning will become null and void six (6) months after it is issued unless the parties agree otherwise.
- c. **Suspension.** If Employer believes counseling or a written warning, or both, would be ineffective because of the seriousness or egregiousness of a situation or if either or both have been tried and failed to obtain the desired correction, Employer may suspend an employee, which is time off without pay, in order to call more forcefully an employee's attention to a deficiency or to a matter of noncompliance. Employer will issue a written warning indicating the reason for suspension and the number of days the employee is suspended.
- d. **Terminations.** Employer will immediately terminate employees who fail to respond to the progressive steps of discipline, or who are involved in circumstances of such seriousness that neither counseling nor warnings nor suspension are appropriate.

**Section 2. Immediate Discipline; Testing for Alcohol and Drugs.**

- a. **Suspension and Termination.** Employer retains the right to suspend or terminate, or both, any employee for violating Employer's reasonable rules, which must be provided to each employee and Union as previously mentioned in Article 4,B, above, without the need to counsel the employee or issue a written warning. Similarly, without the need for counseling or issuing a written warning, Employer may suspend or terminate, or both, an employee for just cause. Just cause includes, but is not limited to, dishonesty, theft, and use of or being under the influence of alcohol or unlawful narcotics while at work or on the premises.

- b. **Testing.** Employer retains the right to conduct testing for alcohol and narcotics use if probable cause exists to believe that an employee is under the influence of such substance during working hours. Union agrees that such testing may be conducted if Employer has a reasonable suspicion of someone being under the influence. Union and Employer have agreed on the procedures for such testing and embodied them in the *Food Maxx Reasonable Suspicion Drug Policy* attached to this Agreement.

**Section 3. No Termination for Union Activity, Refusal to Purchase Securities.** Employer shall not terminate or discriminate against any employee for upholding Union principles, for serving on a committee of Union or any organization affiliated therewith, or for refusing to purchase stocks, bonds, securities, or any interest in Employer's business.

#### **E. GRIEVANCE PROCEDURES.**

**Section 1. Informal Resolution.** An employee may, and is encouraged to, contact Employer's store manager, assistant store manager, or department manager in an attempt to resolve a problem informally, requesting the assistance of his Union representative if he so desires. If, after discussing the grievance with the department manager, the grievance is not resolved to the satisfaction of the employee, he may then discuss the grievance with Employer's store manager, notifying Union if he so desires.

**Section 2. Formal Grievance.** If an employee feels he has been unjustly suspended or terminated, or feels he has received unjust treatment regarding the terms and conditions of employment as set forth herein, and he chooses not to use the informal resolution process or is dissatisfied with the outcome in doing so, he is encouraged to file a grievance with Union. To the extent permissible under the law, this procedure is the exclusive remedy for any claim arising out of, or concerning, the employee's employment or termination. The formal procedure to lodge a grievance is this:

- a. **Step 1.** Within ten (10) business days of the incident giving rise to the grievance, the employee notifies Union of his grievance and Union submits the grievance in writing to Employer's store manager. Union and Employer will arrange a meeting, either in person or telephonically, of Employer's store manager, the employee, and his Union Representative in an attempt to resolve the grievance.
- b. **Step 2.** If step 1 yields no resolution of the grievance, either party, at that time, will refer the grievance in writing to the next scheduled Adjustment Board pursuant to the provisions of section 3, below. If not so referred, the grievance will be considered withdrawn.

**Section 3. Adjustment Board.** Either party may refer both disciplinary (a disciplinary grievance is defined as a dispute regarding a suspension, demotion, or termination) and non-disciplinary grievances to the Union –Employer Adjustment Board. The Union/Employer Adjustment Board will define the issue or issues in question and attempt to resolve it or them. The referring party will give written notice as follows: if to Employer, its Director of Employee and Labor Relations; if to Union, its Secretary-Treasurer. If the parties are unable to resolve the grievance at the Adjustment Board and deadlock the matter, either party may refer it, within ten (10) business days of the deadlock, to an arbitrator as described in the next section. If not so referred, the matter will be considered withdrawn.

**Section 4. Arbitration.**

- a. **Procedure.** The arbitrator will be chosen from a three (3) panel list consisting of Matthew Goldberg, David Nevins, and Franklin Silver. The arbitrator will be chosen by rotation in alphabetical order by last name. If the arbitrator chosen is unable to conduct the arbitration within 90 days, the parties agree to proceed to the next arbitrator. If all three arbitrators are

unable to hold the hearing within 90 days of submission of the matter, the parties agree to choose the arbitrator with the nearest date of availability. Details of this process (such as scheduling, timetable, cost-sharing, etc.) are to be decided by the parties on a case-by-case basis.

- b. **Disciplinary Arbitrations.** Disciplinary arbitrations (meaning a matter concerning a suspension, demotion, or termination) will be heard without the use of a court reporter or briefs. (Nothing set forth in this section prohibits or is meant to prohibit either party from arranging to have a court reporter present to make a transcript of the proceeding at such party's sole cost and expense. If a party does so and the other party then requests a transcript, the other party may obtain a transcript only if it shares equally the cost of the reporter.) The parties will present their evidence and witnesses and argue orally. At the conclusion of the arbitration hearing but before issuance of the bench decision, Union and Employer will meet and in good faith attempt to resolve the grievance. If the parties are unable to settle the grievance, the arbitrator will announce his/her bench decision, reducing such decision to writing within fourteen (14) business days of making it. The parties may mutually agree to waive or modify any or all of the provisions of this expedited procedure.

**Section 5. Wage Claim.** Employer is not required to pay any wage claim or portion thereof retroactively for a period of more than ninety-one (91) days immediately before the date of Employer's receipt of written notice of such claim.

## F. TOOLS, TRAINING.

### **Section 1. Tools and Equipment.**

- a. **Special Wear:** Employer shall provide rain jackets. Employees required to work in refrigerated rooms shall be permitted to wear slacks, sweaters, or other suitable clothing to protect them adequately from cold and dampness while working in such rooms.
- b. **Tools and Equipment:** Employer will furnish all of the required equipment and tools necessary for employment and will only refurbish them for reasonable wear and tear, without cost to the employee. Meat cutting tools are excluded and are the sole responsibility of employees in the meat department.

**Section 2. Meat Apprenticeship Program.** A joint committee of representatives from Employer and Union will develop the procedures, guidelines, and standards for a meat apprenticeship program. On-the-job training of apprentices shall be in accordance with the California Apprenticeship Law (Shelley-Maloney Apprentice Labor Standards Act of 1939) as set forth in the California Labor Code.

## ARTICLE 5: MISCELLANY

### STRIKES AND LOCKOUTS.

**Section 1. No Strike, Lockout.** During the life of this Agreement, the parties agree that there will be no strike, slowdowns, and stoppages of work, picketing, boycotts, or lockouts for any cause whatsoever. This prohibition will not, however, be binding upon either party in the event that Employer or Union refuses or fails to abide by a decision of an Adjustment Board or an arbitrator that has been finally confirmed by a court of competent jurisdiction.

**Section 2. Enforceability; Sympathy Strikes; Termination.** The foregoing agreements of no strike, no lockout, and the like are enforceable irrespective of whether there exists an underlying dispute, if any, which may be processed through the grievance procedure set forth in Article 4, E, of the Agreement. The no strike pledge also prohibits alleged sympathy strikes. Both Employer and Union agree that it shall not be cause for termination or any form of disciplinary action if an employee refuses or declines to refuse to go through or work behind any lawful, sanctioned, established primary picket line existing at the stores covered by this Agreement, including Union's lawful, sanctioned, primary picket line.

### **B: SEVERABILITY.**

It is not the intent of the parties to violate any laws, rulings, or regulations of any governmental authority or agency having jurisdiction over them. Accordingly, if any provision of this Agreement is finally held and determined to be illegal by a court of last resort, such decision will not affect the validity of the remaining provisions of this Agreement, but rather such remaining provisions will continue in full force and effect. Additionally, if any provision or provisions are so declared to be in conflict with a law or rule or regulation, the parties will immediately meet for the purpose of renegotiation and agreement on provisions so invalidated.

### **C. NO REOPENING DURING CONTRACT TERM.**

Employer and Union hereby acknowledge that during the negotiations which resulted in this Agreement, each party had unlimited right and opportunity to make demands and proposals with respect to any subject not removed by law from the area of collective bargaining. This Agreement constitutes the entire agreement of the parties and concludes collective bargaining for its term unless specifically provided for elsewhere herein. The parties, for the life of this Agreement, voluntarily and unqualifiedly waive the right to require the other to bargain collectively with respect to any subject or item not specifically referred to or covered by this Agreement. Notwithstanding the foregoing, Union and Employer may, by mutual agreement, agree to discuss any term or condition of this Agreement and delete, change, or modify it. Union and Employer doing so will not, however, constitute their reopening for bargaining all of the terms and conditions of this Agreement or any term or condition they have not specifically agreed to discuss.

### **D. CONTRACT TERM.**

This Agreement will be considered effective from September 30, 2005, through June 30, 2011 except as it may be extended as explained in this paragraph. The expiration of the term of this Agreement will not be co-terminus with the expiration date of Employer's collective bargaining agreement with Union for its conventional stores. Thus, the expiration date of this Agreement will be extended automatically if Employer is operating under an extension of its collective bargaining agreement for its conventional stores on June 30, 2011. This extension will continue through the 90<sup>th</sup> day after a new agreement for Employer's conventional stores is ratified and effective. . Additionally, this Agreement will continue from year to year unless either Union or Employer gives written notice to the other of a desire to alter, modify, or terminate this Agreement, which notice must be given at least 60 days before the expiration date hereof. If neither Union nor Employer gives such notice, each will be considered to have renewed this Agreement as is for the next contract year.

In witness hereof, the parties have executed this Agreement as of the date beneath their signatures.

**Save Mart Supermarkets, a California corporation,**

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

**Print Name: Michael J. Silveira**

**Its: Vice President-Human Resources & Law**

**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers, Local 8, Golden State**

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

**Print Name: Jacques Loveall**

**Its: President**

**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers Union, Local 120**

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

**Print Name: \_\_\_\_\_**

**Its: President**

**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers Union, Local 373R**

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

**Print Name: \_\_\_\_\_**

**Its: President**

**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers Union, Local 428**

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

**Print Name: \_\_\_\_\_**

**Its: President**

**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers Union, Local 839**

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

**Print Name: \_\_\_\_\_**

**Its: President**

**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers Union, Local 870**

**By:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**Its: President**  
**Dated: August \_\_\_\_, 2006**

**United Food & Commercial Workers Union, Local 1179**

**By:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**Its: President**  
**Dated: August \_\_\_\_, 2006**

**ADDENDUM: UFCW, LOCAL 8, GOLDEN STATE**

**SENIORITY AREAS**

(ARTICLE 1, A, SECTION 1)

- (1) Sacramento County, Yolo County and west portion of Placer County, including but not limited to the towns of Auburn, Colfax, Rocklin, and Roseville.
- (2) Amador County.
- (3) West portion of El Dorado County, including, but not limited to, the towns of Placerville, Pollock Pines, Cameron Park, and El Dorado Hills.
- (4) Eastern portion of Placer County, eastern portion of Nevada County, western portion of Washoe County, Nevada, including, but not limited to, the towns of Truckee, Tahoe City, Kings Beach, and Incline Village, Nevada.
- (5) Eastern portion of El Dorado County and northwestern portion of Douglas County, Nevada, including, but not limited to, the towns of South Lake Tahoe and Zephyr Cove, Nevada.
- (6) Stanislaus County.
- (7) Calaveras County.
- (8) Tuolumne County.
- (9) San Joaquin County.
- (10) Chico, Oroville, Paradise, and Gridley.
- (11) Marysville, Yuba City, Grass Valley, Nevada City, and Penn Valley.
- (12) Shasta County except Burney.
- (13) Burney.
- (14) Tehama County.
- (15) Siskiyou and Modoc Counties.
- (16) Trinity County.
- (17) Mendocino County except Fort Bragg.
- (18) Fort Bragg.
- (19) Lake County.
- (20) Sonoma County.
- (21) Outlying areas—by town.
- (22) Fresno County.

- (23) Merced County.
- (24) Madera County.
- (25) Kings County.
- (26) Tulare County.
- (27) Mariposa County.
- (28) Napa, Solano, and Contra Costa Counties with the exception of El Cerrito, Richmond, San Pablo, El Sobrante, and Kensington of Contra Costa County.
- (29) Livermore and Pleasanton in Alameda County.

Employees working within a seniority area listed above with only one (1) Food Maxx store location shall have the right to assert their seniority within Union's closest adjacent geographical seniority area until a second (2nd) store is added in such employees' seniority area.

(ARTICLE 2, B, SECTION 1)

EFFECTIVE: 9-3-06

**FOOD MAXX**

JOB CODE	STEP IN GRADE	DESCRIPTION	HOURS TO ADVANCE	Transition RATE 2006	Ratification 2006 RATE	September 2007 RATE	September 2008 RATE	September 2009 RATE	September 2010 RATE
G1	10	SENIOR CLK/CUTTER EXP.	0	\$17.60	\$18.10	\$18.40	\$18.40	\$18.40	\$18.70
G1	01	SENIOR CLK/CUTTER 1	1040		\$14.00	\$14.00	\$14.00	\$14.00	\$14.50
G1	02	SENIOR CLK/CUTTER 2	1040	\$13.24	\$14.50	\$14.50	\$14.50	\$14.50	\$15.00
G1	03	SENIOR CLK/CUTTER 3	1040	\$13.58	\$15.00	\$15.00	\$15.00	\$15.00	\$15.50
G1	04	SENIOR CLK/CUTTER 4	1040		\$15.50	\$15.50	\$15.50	\$15.50	\$16.00
	05	SENIOR CLK/CUTTER 5	1040	\$14.10	\$16.25	\$16.25	\$16.25	\$16.25	\$16.50
	06	SENIOR CLK/CUTTER 6	1040	\$14.73	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00
	07	SENIOR CLK/CUTTER 7	1040		\$17.50	\$17.50	\$17.50	\$17.50	\$17.50
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G2	10	PARTIME CLK/CUTTER EXP.	0	\$13.09	\$13.59	\$13.89	\$13.89	\$13.89	\$14.19
G2	01	PARTIME CLK/CUTTER 1	1040	\$7.65	\$9.00	\$9.00	\$9.00	\$9.00	\$9.25
G2	02	PARTIME CLK/CUTTER 2	1040	\$8.79	\$9.50	\$9.50	\$9.50	\$9.50	\$9.50
G2	03	PARTIME CLK/CUTTER 3	1040	\$9.74	\$10.25	\$10.25	\$10.25	\$10.25	\$10.25
G2	04	PARTIME CLK/CUTTER 4	1040		\$10.79	\$10.79	\$10.79	\$10.79	\$10.79
G2	05	PARTIME CLK/CUTTER 5	1040	\$10.79	\$11.21	\$11.21	\$11.21	\$11.21	\$11.21
	06	PARTIME CLK/CUTTER 6	1040	\$11.21	\$12.09	\$12.09	\$12.09	\$12.09	\$12.09
	07	PARTIME CLK/CUTTER 7	1040		\$12.59	\$12.59	\$12.59	\$12.59	\$12.59
	08	PARTIME CLK/CUTTER 8	1040		\$13.09	\$13.09	\$13.09	\$13.09	\$13.09
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G4	10	PARTIME EXP CLERK	0	\$12.09	\$12.59	\$12.89	\$12.89	\$12.89	\$13.19
G4	01	PARTTIME CLERK 1	1040	\$7.65	\$8.75	\$8.75	\$8.75	\$8.75	\$8.75
G4	02	PARTTIME CLERK 2	1040	\$8.18	\$9.25	\$9.25	\$9.25	\$9.25	\$9.25
G4	03	PARTTIME CLERK 3	1040	\$8.82	\$9.75	\$9.75	\$9.75	\$9.75	\$9.75
G4	04	PARTTIME CLERK 4	1040	\$9.76	\$10.40	\$10.40	\$10.40	\$10.40	\$10.40
	05	PARTTIME CLERK 5	1040		\$10.79	\$10.79	\$10.79	\$10.79	\$10.79
	06	PARTTIME CLERK 6	1040		\$11.49	\$11.49	\$11.49	\$11.49	\$11.49
	07	PARTTIME CLERK 7	1040		\$12.09	\$12.09	\$12.09	\$12.09	\$12.09
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G5	10	EXPERIENCED CLERK HELPER		\$7.90	\$8.40	\$8.40	\$8.40	\$8.40	\$8.40
				\$7.65					
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G1	98	NIGHT CREW CHIEF	0		\$19.10	\$19.40	\$19.40	\$19.40	\$19.70
G1	97	*AFTERNOON SUPERVISOR	0		\$19.10	\$19.40	\$19.40	\$19.40	\$19.70
G1	96	SECOND PERSON MEAT/PRODUCE	0		\$19.10	\$19.40	\$19.40	\$19.40	\$19.70

\*Once transitioned, all hours must be accomplished at that step before progressing to the next step. E.g. achieve all 1040 hours, and then move through the progression.

**BONUS CHART**

	2008 RATE	2009 RATE
SENIOR CLK/CUTTER EXP.	\$0.30	\$0.30
PARTIME CLK/CUTTER EXP.	\$0.30	\$0.30
PARTIME EXP CLERK	\$0.30	\$0.30
NIGHT CREW CHIEF	\$0.30	\$0.30
[REMAINING AFTERNOON SUPERVISORS]	\$0.30	\$0.30
2nd PERSON MEAT/PRODUCE	\$0.30	\$0.30
EXPERIENCED CLERK HELPER	\$0.20	\$0.20

**HEALTH & WELFARE  
EXHBIT I**

To be added. Summary of Select Plan.