

**MEMORANDUM OF UNDERSTANDING  
BETWEEN LOCALS 328, 371, 464A, 1445, AND 1459 OF THE UNITED FOOD AND  
COMMERCIAL WORKERS INTERNATIONAL UNION AND  
THE STOP & SHOP SUPERMARKET COMPANY LLC  
June \_\_, 2020.**

1. Scope and Structure.

The Stop & Shop Supermarket Company LLC (“S&S”) and Locals 328, 371, 464A, 1445, and 1459 of the United Food and Commercial Workers International Union (“Local Unions”) are parties to collective bargaining agreements (“CBAs”) that require S&S’s participation in, and contributions to, the UFCW International Union - Industry Pension Fund (“National Fund”). S&S and the Local Unions desire to establish the terms and conditions of employment as they relate to the provision of retirement benefits on and after July 1, 2020 to those employees of S&S represented by the Local Unions who would otherwise be covered under the National Fund.

This Memorandum of Understanding (“MOU”) shall become an agreement between S&S and each of the Local Unions, shall be a part of each CBA that required S&S’s participation in, and contributions to, the National Fund and shall replace the pension language in the existing CBAs only with respect to S&S’s participation in the National Fund on and after July 1, 2020 (and, except as otherwise specifically provided herein, shall not affect the rights or obligations of the bargaining parties with respect to the pension provisions of the CBAs with respect to periods prior to July 1, 2020). Except as expressly amended herein, all other terms and conditions of the existing CBAs shall remain in full force and effect and nothing contained herein shall affect the rights of the

Company or a Local Union with respect to any other term or condition of a CBA (including, without limitation, the right to implement any proposal upon impasse or the right to grieve any action taken pursuant to a CBA).

2. Definitions. For purposes of this MOU, the term:

2.1. “Administrative Expense Charge” means 10% of the Monthly Employer Contribution Rate made to the VAPP with respect to hours worked on and after July 1, 2020 and as applied only to the contribution rates in effect as of July 1, 2020. The monthly Administrative Expense Charge shall reflect an additional \$2.50 per Employee per month effective July 1, 2023, plus an additional \$2.50 per Employee per month effective July 1, 2025. Following the end of the term of this MOU, the Administrative Expense Charge may be subject to modification at the discretion of the Board of Trustees of the VAPP in consultation with the professionals retained by the VAPP.

2.2. “AUCR” means the Appropriate Unit Contribution Rate as defined under the National Fund Plan Documents.

2.3. “Benefit Bearing Contribution” means the Monthly Employer Contribution Rate, minus the Administrative Expense Charge.

2.4. “Employee” means any employee of S&S on whose behalf contributions are required to be made to the National Fund under the terms of the existing CBAs between

S&S and the Local Unions and for whom contributions will be made to the VAPP instead of the National Fund effective July 1, 2020 pursuant to the terms of this MOU.

2.5. “Grandfathered Participant” shall mean those participants of the VAPP who as of June 30, 2020 are either: (i) at least age 55 with at least 10 years of vesting service under the National Fund; or (ii) have at least 20 years of vesting service under the National Fund.

2.6. “Kroger” shall mean The Kroger Co. and includes any other company that is covered by a collective bargaining or participation agreement requiring contributions to the National Fund and that is under common control with The Kroger Co., within the meaning of Section 4001(b) of ERISA.

2.7. “Monthly Employer Contribution Rate” means S&S’s monthly rate (or hourly equivalent rate) of employer contributions to the National Fund pursuant to the CBAs in effect between S&S and each of the Local Unions as of June 30, 2020. For the avoidance of doubt, the Monthly Employer Contribution Rate shall be the same as the monthly rate (or hourly equivalent rate) of employer contributions to the National Fund pursuant to the CBAs in effect between S&S and each of the Local Unions as of June 30, 2020 and shall be deemed to include all contributions that are required to be made by S&S pursuant to CBAs in effect on June 30, 2020; provided, however, that the Monthly Employer Contribution Rate shall not include any increase that is required to address the funding of the National Fund, any change in the National Fund AUCR or any increase that results

from a maintenance of benefits provision. Effective July 1, 2023 and July 1, 2025 the Monthly Employer Contribution Rate will increase by the \$2.50 per month per employee increase in the Administrative Expense Charge set forth in Section 2.1. These two \$2.50 increases in the Administrative Expense Charge shall be applied to solely to administrative expenses and shall not be considered a Benefit Bearing Contribution. The Monthly Employer Contribution Rate, as determined under this Section 2.7, must remain in effect through June 30, 2028.

2.8. "Nominal Accrual Rate" means the accrual rate earned by each participant of the VAPP prior to the annual adjustment in accrued benefits following the close of each Plan Year to reflect investment gains and losses earned by the VAPP during the Plan Year. With respect to non-Grandfathered Participants, and subject to the provisions of Section 5.1(b) and (c), the Nominal Accrual Rate equals 27.5% multiplied by Benefit Bearing Contributions. With respect to Grandfathered Participants, the Nominal Accrual Rate under the VAPP shall equal the accrual rate the Grandfathered Participant would have received under the National Fund applying the AUCR as defined under the National Fund Plan Documents, provided that such Nominal Accrual Rate for Grandfathered Participants shall be applied only for as long as the Transition Reserve remains in effect and has funding, including for periods past the term of this MOU if assets remain in the Transition Reserve. Effective for service completed on and after the effective date the Transition Reserve is projected to be exhausted, the Nominal Accrual Rate for Grandfathered Participants shall equal the Nominal Accrual Rate for non-Grandfathered Participants.

2.9. “Plan Year” means the twelve-month period from July 1 to June 30.

2.10. “National Fund Plan Documents” means the plan document established by the National Fund Board of Trustees in effect on June 30, 2020 to provide benefits to eligible Employees and except as the context may otherwise provide includes all of the plans established under the Fund and any rules and regulations adopted by the Trustees for said plans.

2.11. “S&S” means The Stop & Shop Supermarket Company LLC and includes any other company that is covered by a collective bargaining or participation agreement requiring contributions to the National Fund and that is under common control with The Stop & Shop Supermarket Company LLC, within the meaning of Section 4001(b) of ERISA.

2.12. “Stabilization Reserve” means a reserve established under the VAPP that is funded in accordance with Section 5.1(a) and that is used to mitigate reductions in the Nominal Accrual Rate arising from investment losses incurred during a Plan Year.

2.13. “Transition Reserve” means a reserve established under the VAPP totaling \$45 million to support the Nominal Accrual Rate of Grandfathered Participants and non-investment related adverse experience not covered by the 3% margin for actuarial experience implicit in the Nominal Accrual Rate for non-Grandfathered Participants.

2.14. "Union" means the United Food and Commercial Workers International Union.

2.15. "VAPP" shall mean the Variable Annuity Pension Plan established effective July 1, 2020, which shall be known as the UFCW International Union-Industry Variable Annuity Pension Plan and shall be operated as a multiemployer plan within the meaning of Section 3(37) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended and a defined benefit plan within the meaning of Section 3(35) of ERISA that is a separate plan from (and not a part of) the National Fund. Kroger and S&S shall be contributing and participating employers to the VAPP. Nothing in the VAPP shall preclude the acceptance of other contributing employers to participate in the VAPP, provided that such employers agree to be bound by the terms and conditions of participation in the VAPP that are established by the Board of Trustees of the VAPP. The following employers automatically shall be eligible to participate in the VAPP on behalf of their employees on such terms and conditions as may be established by the Board of Trustees of the VAPP if such employer contributes to the National Fund immediately prior to its commencement of contributions to the VAPP and it agrees to pay or settle its withdrawal liability in accordance with such terms and conditions as may be agreed upon between such employer and the National Fund: the Local Unions in their capacity as employers; any fund office of a health and welfare fund covering employees of Kroger or S&S; and Penske, in its capacity as a third party service provider to Kroger (but only with respect to those employees who are providing services to Kroger).

3. Complete Withdrawal from National Fund. S&S shall cease to have any obligation to make contributions to the National Fund effective June 30, 2020 for any period of employment (i.e., for hours and months worked) after June 30, 2020 and shall completely withdraw from the National Fund within the meaning of Section 4203(a) of ERISA(i.e., S&S will permanently cease to have any obligation to contribute to the National Fund for periods of employment after June 30, 2020) (the “Withdrawal”). Notwithstanding the foregoing, S&S shall remain obligated to make all required contributions for periods of covered employment on and prior to June 30, 2020 (e.g., it shall be required to remit the contributions for hours and months worked in June in accordance with the requirements of the National Fund for the remittance of employer contributions), but such obligation shall not otherwise affect the date of the Withdrawal. The Withdrawal shall be contingent upon (i) the execution of the Settlement Agreement (defined in Section 4 below), and (ii) the satisfaction of the conditions precedent to the Withdrawal and implementation of this MOU, as set forth in Section 11.

4. Payment of Withdrawal Liability. The amount of, and payment by S&S of its withdrawal liability shall be in accordance with, and reflected in, the terms of a settlement agreement between S&S and the Board of Trustees of the National Fund (the “Settlement Agreement”). The Settlement Agreement shall recognize the Withdrawal (subject to the conditions precedent to the Withdrawal and implementation of this MOU, as set forth in Section 11) and shall provide S&S with a complete release of any and all claims or causes of action arising from or out of the Withdrawal and the assessment of withdrawal liability against S&S (irrespective of whether the date of the Withdrawal is determined to

be in the National Fund's plan year ending June 30, 2020 or June 30, 2021), including any claim the National Fund may have in the event the National Fund experiences a mass withdrawal subsequent to the date of the Withdrawal.

5. Establishment of VAPP. The Local Unions and S&S shall implement the VAPP to be effective July 1, 2020. This new plan will be established no later than October 31, 2020 in accordance with the terms of this MOU; provided, however, that the individuals designated by the Union and the employers (Kroger and S&S) as Trustees of the VAPP may mutually agree to extend the date for the establishment of the VAPP. S&S shall contribute to the VAPP in accordance with the terms of this MOU. S&S shall sign a participation agreement with the Local Unions and Board of Trustees of the VAPP that is substantially the same in form as the participation agreement that has been established by the National Fund for contributing employers.

The VAPP shall contain the following terms:

5.1 Accrual Rate.

- (a) Each eligible employee covered under an existing CBA between a Local Union and S&S who becomes a participant in the VAPP shall accrue a benefit each Plan Year based on the Nominal Accrual Rate applicable to such eligible employee. At the end of each Plan Year, all accrued benefits that were previously earned based on the Nominal Accrual Rate shall be

subject to a variable annuity calculation and shall be adjusted to reflect net investment returns above or below a hurdle rate of return of 5.5%. Only investment returns up to a net return of 7% shall be applied to the variable annuity calculation and any returns in excess of a net return of 7% shall be applied and credited to the Stabilization Reserve. Examples of how the variable annuity calculation will be applied to the Nominal Accrual Rate at the close of each Plan Year are attached to this MOU as Exhibit A.

- (b) With respect to Participants under the VAPP who either first become participants in the VAPP on and after July 1, 2020 or who have been Participants in both the VAPP and the National Fund for a combined period of less than ten years as of June 30<sup>th</sup> of the applicable Plan Year, the accrual rate until the fifth anniversary of the Participant's first Contribution shall equal 75% of the Nominal Accrual Rate, and for the fifth anniversary of the Participant's first Contribution through the tenth anniversary of the Participant's first Contribution, the accrual rate shall equal 87.5% of the Nominal Accrual Rate. Participants with at least ten years of participation, including years of participation in the National Fund, shall receive 100% of the Nominal Accrual Rate. For this purpose, participation shall include years of service completed in covered employment prior to attaining age 21.

5.2 Eligibility, Participation and Vesting. Except as provided in this subsection, the rules for eligibility, participation and vesting as described in the National Fund Plan Documents shall be used to determine the eligibility, participation and vesting rules of the VAPP. An employee who was a participant in the National Fund shall receive eligibility (including eligibility for benefit options), participation and vesting credit under the VAPP for service completed in covered employment and credited under the National Fund and it is the intent of the Company and the Local Unions that the National Fund shall provide an employee who is a participant in the VAPP with eligibility (including eligibility for benefit options), participation and vesting credit under the National Fund for service completed in covered employment and credited under the VAPP. However, with respect to any employee who was not a participant in the National Fund on or before June 30, 2020, such employee must attain age 21 to become a participant in the VAPP; provided that, for the term of any CBA in effect on June 30, 2020 that provides an earlier minimum age, such CBA minimum age shall apply in lieu of age 21. Any employee who becomes a participant upon attaining age 21 shall receive participation service for purposes of paragraph 5.1(b) above, and service for consecutive years of service completed in covered employment prior to attaining age 21 for eligibility and vesting purposes. If such employee subsequently becomes fully vested in the VAPP such employee shall receive credited service for benefit accruals earned after June 30, 2020 (provided that employer contributions for covered employment by such employee were required to be made to the VAPP pursuant to CBAs in effect as of July 1, 2020). All

reciprocity rules and agreements in place with the National Fund as of June 30, 2020 shall be deemed adopted by the VAPP Board of Trustees and shall apply on and after July 1, 2020 for purposes of determining eligibility to participate and vesting credit in the VAPP.

5.3 Benefit Options. The VAPP shall include, to the extent appropriate to the nature of the VAPP, all benefit options currently provided under the National Fund, including but not limited to the right to receive disability, deferred vested benefits and surviving spouse benefits; provided, however, that notwithstanding the foregoing, the VAPP shall not offer a Social Security Level Income Option. The VAPP shall incorporate provisions of the National Fund Plan Documents concerning the eligibility and payment of these benefits. The Board of Trustees are directed to consider other benefit options that may reduce administrative expenses, such as the payment of lump sum benefits where legally permissible and that may be appropriate from a fiduciary perspective in providing lifetime retirement benefits to participants.

6. Funding the VAPP. The VAPP shall be funded as follows:

6.1. Monthly Employer Contributions. During the term of this Agreement, S&S shall make monthly employer contributions to the VAPP at the Monthly Employer Contribution Rate. Employer contributions shall be required to be made to the

VAPP without regard to the requirement under Section 5.2 of the MOU that an Employee attain age 21 to participate in the VAPP.

- 6.2. Pre-Funding by S&S. Within thirty (30) days of the establishment of the VAPP, S&S shall pre-fund the Transition Reserve by making a payment of \$18 million, which along with the anticipated funding of such reserve by Kroger shall total \$45 million.
- 6.3. Escrow Account. Pending establishment of the VAPP, S&S will establish an interest-bearing bank account to serve as an escrow account (the “Escrow Account”) to hold the monthly contributions that it would otherwise make to the VAPP for work performed by S&S’s covered employees on and after July 1, 2020. The Escrow Account shall be established and held in accordance with the Escrow Agreement attached hereto as Exhibit B. Upon the ratification of this Agreement by the Local Unions and the establishment of the VAPP, the proceeds of the escrow account, net of escrow fees charged, shall be released to the VAPP. If the Agreement is not ratified by the Local Unions by October 1, 2020, the proceeds of the escrow account, net of escrow fees charged, shall be released to the National Fund and S&S will continue to participate in the National Fund as of July 1, 2020. Any proceeds released to the National Fund shall be considered and deemed employer contributions by S&S for the periods during which S&S was escrowing VAPP contributions.
7. PBGC Premium Increases. Any increase to the PBGC premiums after May 1, 2020 that are imposed on the VAPP due to newly enacted legislation will be added to the

Administrative Expense Charge. If the applicable PBGC premium rate increases are legislated during the term of this MOU, S&S and each Local Union signatory to this MOU agree to meet and bargain solely over such legislated increases as their underlying collective bargaining agreement expires on and after June 30, 2020. Any agreed upon increases in contribution rates to cover such legislated increases shall not be considered Benefit Bearing Contributions. Any such increase in the Administrative Expense Charge shall not be reflected in the determination of a Participant's Nominal Accrual Rate until after the expiration of the collective bargaining agreement in effect with the effective date determined under the same grandfather rules as contained in the National Plan as of June 30, 2020. The amount of the increase in the Administrative Expense Charge shall be determined to include the cost (if any) of the legislated increase in PBGC premiums for the period prior to the effective date of the increase in the Administrative Expense Charge. Such cost must be satisfied by non-benefit bearing increases in the contribution rate or benefit adjustments or a combination of non-benefit bearing contribution increases and benefit adjustments, with the cost of non-benefit bearing contribution increases satisfied over the longer of (1) the term of the next collective bargaining agreement, or (2) three years following the increase to the PBGC premiums.

8. Corporate Governance.

8.1 Composition of Board of Trustees. The Board of Trustees shall consist of eight trustees, two of whom shall be representatives of Kroger, two of whom shall be representatives of S&S (such trustee representatives of Kroger and S&S, the

“Employer Trustees”), and four of whom shall be appointed by the Union and serve as representatives of the Local Unions (such trustee representatives of the Local Unions, the “Union Trustees”). The Employer Trustees may designate up to three alternate Employer Trustees, and the Union may designate up to three alternate Union Trustees. All Union Trustees and alternate Union Trustees shall be appointed by an instrument in writing signed by the Secretary/Treasurer and President of the Union.

8.2 Unless inconsistent with the provisions of this MOU or the nature of the VAPP, the Board of Trustees shall adopt an Agreement and Declaration of Trust with terms and conditions that are similar to those contained in the Agreement and Declaration of Trust of the National Fund as of June 30, 2020, provided, however, that except for the provisions specified in the next sentence, the Board of Trustees is not obligated to use any provision of the Agreement and Declaration of Trust of the National Fund as of June 30, 2020. Notwithstanding the foregoing, (1) the Agreement and Declaration of Trust for the VAPP shall contain provisions that are substantially the same as the provisions in the Agreement and Declaration of Trust for the National Fund with respect to: Trustee voting, quorums, dispute resolution, the collection of contributions, payroll audits, amendment and termination; and (2) nothing in this MOU shall preclude the Board of Trustees of the VAPP from amending the Agreement and Declaration of Trust of the VAPP to comply with applicable law or as they deem appropriate.

8.3 Except as provided in Section 2.15, no additional employers may be admitted to the VAPP without the approval of the Board of Trustees.

9. Term of Agreement. The terms of this Memorandum of Understanding shall continue in full force and effect from July 1, 2020 through June 30, 2028.
10. Final Terms and Conditions. This MOU was negotiated with the assistance of the Benefits Subcommittee of the National Fund and representatives of the Benefits Subcommittee are signing this MOU to acknowledge that the terms of this MOU represents the final agreement of the parties with respect to the matters set forth herein and that such terms are not subject to further negotiation. Notwithstanding anything in this MOU to the contrary, and solely with the exception of bargaining with respect to PBGC premium increases in accordance with Section 7 of this MOU, S&S and each of the Local Unions agree that the terms of this MOU shall remain in effect (and are not subject to modification) until June 30, 2028, including, without limitation, the terms with respect to the Monthly Contribution Rate and benefit levels under the VAPP.
11. Approval/Ratification. The implementation of this Memorandum of Understanding is subject to and conditioned upon (i) execution of this MOU by the members of the Benefits Subcommittee by June 30, 2020, (ii) execution of this MOU by the Local Unions on or before July 22, 2020, (iii) approval by S&S and execution of this MOU on or before June 30, 2020, (iv) ratification by each of the Local Unions on or before October 1, 2020; (v) approval of the related memorandum of understanding regarding Kroger's withdrawal from the National Fund between Kroger and various locals of the Union (subject to the timing requirements contained therein), and ratification by each of such locals of the Union on or before October 1, 2020; (vi) establishment of the VAPP in accordance with this MOU; and (vii) the execution of the Settlement Agreement on or before June 30, 2020.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be duly executed as of the day and year first above written.

BENEFITS SUBCOMMITTEE OF THE UFCW  
INTERNATIONAL UNION - INDUSTRY PENSION FUND

\_\_\_\_\_  
Milton Jones, solely in his capacity  
as a representative of the Benefits Subcommittee  
and not in any other capacity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jason Paradis, solely in his capacity  
as a representative of the Benefits Subcommittee  
and not in any other capacity

\_\_\_\_\_  
Date

LOCAL 328 OF THE UNITED FOOD AND COMMERCIAL WORKERS

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

LOCAL 371 OF THE UNITED FOOD AND COMMERCIAL WORKERS

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

LOCAL 464A OF THE UNITED FOOD AND COMMERCIAL WORKERS

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

LOCAL 1445 OF THE UNITED FOOD AND COMMERCIAL WORKERS

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

LOCAL 1459 OF THE UNITED FOOD AND COMMERCIAL WORKERS

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

THE STOP & SHOP SUPERMARKET COMPANY LLC

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