

**EXHIBIT 1 TO SPECIFICATIONS FOR IBT CONSOLIDATED PENSION FUND
(Applicable to Third Party Logistic Providers)**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS LOCAL NO. _____ AND
_____ (THE “EMPLOYER”)**

_____, 2015

1. Scope and Structure.

_____ (the “Employer”) and Local No. ____ (the “IBT Local”) of the International Brotherhood of Teamsters (“IBT”) are parties to a Collective Bargaining Agreement (as defined below) that requires the Employer’s participation in, and contributions to, the Central States, Southeast and Southwest Areas Pension Plan (“Central States”). The Employer and the IBT Local desire to establish the terms and conditions of employment, as they relate to the provision of retirement benefits provided to employees of the Employer who are covered by the Collective Bargaining Agreement and who participate in Central States. This Memorandum of Understanding (“MOU”) shall become an agreement between the Employer and the IBT Local with respect to Central States and shall replace all pension language in the Collective Bargaining Agreement.

Under the terms of the MOU, the Employer and the IBT Local elect to modify the Collective Bargaining agreement in order to participate in the IBT Consolidated Pension Fund and agree to comply with the terms and conditions of this MOU. The modification of the Collective Bargaining Agreement shall not become effective until and unless ratified by a majority of the affected union members in the bargaining unit voting in a secret ballot referendum conducted by the IBT Local. Ratification of a mid-term modification providing for participation in the IBT Consolidated Pension Fund shall not otherwise affect the expiration date of the remaining terms of the existing Collective Bargaining Agreement.

2. Definitions.

For purposes of this MOU, the following terms shall have the meanings set forth below:

- 2.1 “Board of Trustees”** means the Board of Trustees of the IBT Consolidated Pension Fund.
- 2.2 “Central States”** means the Central States, Southeast and Southwest Areas Pension Plan.
- 2.3 “Collective Bargaining Agreement”** means the collective bargaining agreement between the Employer and the IBT Local (including any supplements) that requires contributions by the Employer to Central States

with respect to members of the IBT Local in the bargaining unit covered by such collective bargaining agreement.

2.4 “**Employer**” means _____.

2.5 “**Employer IBT Consolidated Pension FA**” means a funding account, which is similar to the one required under the Internal Revenue Code and reported on Schedule MB of Form 5500, but with the following characteristics:

- (a) The balance in the Employer IBT Consolidated Pension FA on the day after the Withdrawal Date shall be zero.
- (b) The Employer IBT Consolidated Pension FA shall be charged each year with:
 - (1) The Normal Cost Accrual for such year with respect to employees of the Employer.
 - (2) The Employer’s share of the anticipated administrative expenses for such year.
 - (3) Amortization of the Transferred Employer UAAL over the period and in the amounts set forth in Section 3.3(a).
 - (4) Amortization, over a period of five (5) years, of increases in unfunded Employer Liabilities that arise after the Withdrawal Date, due to all net experience losses (including, without limitation, plan changes, assumptions or method changes, or plan mergers), as determined in accordance with subsection (e) and (f).
 - (5) The Employer’s share of any amortized unpaid required contribution by another Participating Employer that is treated as an experience loss in accordance with Section 3.3(d)(4). For this purpose, the Employer’s share of any amortized unpaid required contribution shall be determined based on the proportion that the Employer’s required contribution for the year (as determined without regard to Section 3.4) bears to the total of all required contributions for the year (as determined without regard to any provision that is similar to Section 3.4 and determined by excluding the required contribution of the delinquent employer).
 - (6) Interest to the end of the plan year (at the investment return assumption rate specified in Section 3.3(d)(1) or (2)) on items (1) (2) and (4), and on the unpaid portion of the Transferred Employer UAAL.
- (c) The Employer IBT Consolidated Pension FA shall be credited each year with:

- (1) Employer contributions for the plan year.
 - (2) Amortization, over a period of five (5) years, of decreases in unfunded Employer Liabilities that arise after the Withdrawal Date, due to all net experience gains (including, without limitation, plan changes, assumptions or method changes, or plan mergers), as determined in accordance with subsection (e) and (f).
 - (3) Interest on the balance in the Employer IBT Consolidated Pension FA at the beginning of the plan year and on items (1) and (2) at the investment return assumption rate specified in Section 3.3(d)(1) or (2), as applicable.
- (d) The balance in the Employer IBT Consolidated Pension FA at the end of any plan year shall be the balance at the beginning of the plan year less the charges in subsection (b) above plus the credits in subsection (c) above.
 - (e) Gains (losses) arising after the Withdrawal Date shall be determined as the actuarial accrued liability (as determined in accordance with Section 3.3(d)(1) or (2) as applicable) as of the beginning of the plan year less the market value of Plan assets as of the beginning of the plan year less the balance in the Employer IBT Consolidated Pension FA at the beginning of the plan year plus the outstanding balance of any remaining bases in above subsections (b)(3) and (b)(4) minus any outstanding balance of remaining bases in subsection (c)(2) above.
 - (f) In calculating the Employer IBT Consolidated Pension FA (and the required contribution of the Employer), the IBT Consolidated Pension Fund shall be deemed to have earned the rate of return assumed by the plan actuary in preparing the actuarial valuation report for the IBT Consolidated Pension Fund, regardless of the actual investment return.
 - (g) The outstanding charge bases and credit bases shall be based on scheduled, not actual, payments except as modified pursuant to Section 3.4.

2.6 “Employer Liabilities”

- (a) For purposes of determining the Transferred Employer Liabilities, the actuarial accrued liabilities under Central States (whether or not vested) that are attributable to (1) current employees of the Employer, (2) Employees of the Employer who are on Union Leave of Absence, (3) Employees of the Employer who are considered to be Central States terminated vested participants but who are still employed by Employer, (4) each Central States retiree who was employed by the Employer on his or her last day of covered employment under Central States, even though part of the accrued

benefit of such participant may have been attributable to covered employment with another contributing employer (an “Employer retiree”), and (5) beneficiaries and alternate payees of the forgoing.

(b) For all other purposes, “Employer Liabilities” means the actuarial accrued liabilities under the IBT Consolidated Pension Fund that are attributable to (i) the Transferred Employer Liabilities, (ii) employment or service with the Employer following the Withdrawal Date, (iii) changes in the actuarial accrued liability of the IBT Consolidated Pension Fund attributable to actuarial gains or losses on (i) and (ii) (to the extent not included already in (i) or (ii)), and (iv) changes in methods or assumptions (to the extent not included already in (i), (ii), or (iii)).

2.7 “**Employer Trustees**” mean the members of the Board of Trustees of the IBT Consolidated Pension Fund who are appointed by the Participating Employers in accordance with the terms of the Trust Agreement.

2.8 “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

2.9 “**Funded Ratio**” means the assets divided by the actuarial accrued liability of the IBT Consolidated Pension Fund (as determined based on the traditional unit credit accrued liability and the market value of plan assets); provided, however, that for purposes of Section 3.4, the Funded Ratio shall (1) take into account the amount of actual and expected contributions by the Employer and the other Participating Employers for the plan year and (2) be determined using the same methods, assumptions and data used for the actuarial certification under Section 432 of the Internal Revenue Code (taking into account Section 3.3(i)).

2.10 “**IBT**” means the International Brotherhood of Teamsters.

2.11 “**IBT Consolidated Pension Fund**” means the IBT Consolidated Pension Fund, as established by the IBT and the Participating Employers.

2.12 “**IBT Local**” means Teamsters Local Union No.____.

2.13 “**IBT Trustees**” mean the members of the Board of Trustees of the IBT Consolidated Pension Fund who are appointed by the IBT in accordance with the terms of the Trust Agreement.

2.14 “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

2.15 “**Normal Cost Accrual**” means the actuarially determined normal cost of accruals under the IBT Consolidated Pension Fund attributable to employment with the Employer (determined in accordance with the

methods and assumptions contained in Section 3.3(d)(1) or (2), as applicable).

- 2.16** “**Participating Employer(s)**” means any employer that has agreed to make contributions to the IBT Consolidated Pension Fund and to be bound by the terms and conditions of the IBT Consolidated Pension Fund.
- 2.17** “**Third Party Logistic Providers**” means Atlas, Ruan, Southstar, Transervice and Zenith in connection with the third party logistic services provided to The Kroger Co. or its subsidiaries. The term “Third Party Logistic Provider” shall also include any contracted third party logistic provider that replaces one of the Third Party Logistic Providers named in the preceding sentence.
- 2.18** “**Transfer Date**” means the date on which the Employer Liabilities are transferred to the IBT Consolidated Pension Fund from Central States.
- 2.19** “**Transferred Employer Liabilities**” mean the Employer Liabilities that are transferred to the IBT Consolidated Pension Fund from Central States on the Transfer Date.

The Transferred Employer Liabilities will be determined based on the traditional unit credit funding method and the following actuarial assumptions:

- (1) Investment return: 7.5%, net of investment expenses.
 - (2) Mortality (Pre-Retirement): RP-2000 Blue Collar Combined Mortality Projected to 2015 using Scale AA, separate tables for males and females.
 - (3) Mortality (Post-Retirement): Same as pre-retirement.
 - (4) Mortality (Disabled): RP 2000-Disabled Annuitant Mortality Table.
 - (5) Other assumptions: Based on the assumptions used by Central States as of the Transfer Date.
- 2.20** “**Transferred Employer UAAL**” means a fixed dollar amount equal to the unfunded portion of the Transferred Employer Liabilities as of the Transfer Date. Such amount shall be fixed as of the Transfer Date and not subject to change thereafter.

For purposes of determining the amount charged to the IBT Consolidated Pension Fund on the Transfer Date, the plan actuary for the IBT Consolidated Pension Fund shall determine the amount of the Transferred Employer UAAL based on the traditional unit credit funding method and the actuarial assumptions set forth in Section 2.19 above. Thereafter, the Transferred Employer UAAL will be determined by the plan actuary for the IBT Consolidated Pension Fund in accordance with Section 3.3(d)(2).

2.21 “**Union Leave of Absence**” means a leave of absence by an employee of the Employer while temporarily employed by the IBT or an IBT Local (including while employed to hold office in the IBT or an IBT Local).

2.22 “**Withdrawal Date**” means (i) June 30, 2016, (ii) January 1, 2016, if the conditions set forth in Section 3.3(a)(3) have been met, or (iii) the date determined pursuant to Section 3.2(c)(6).

3. Agreement to Contribute to the IBT Consolidated Pension Fund, Withdrawal from Central States, and Transfer of Employer Liabilities. This agreement is conditioned upon all of all the following:

3.1 Agreement to Contribute to the IBT Consolidated Pension Fund

The Employer hereby agrees to participate in, and to make contributions to, the IBT Consolidated Pension Fund in accordance with the terms of this MOU.

3.2 Withdrawal from Central States

(a) Effective as of the Withdrawal Date, the Employer will permanently cease to have any obligation to contribute to Central States (i.e., the Employer will completely withdraw from Central States on the Withdrawal Date and shall not thereafter be required to make any contributions to Central States).

(b) On the day following the Withdrawal Date:

(1) Employees of the Employer who are covered by the Collective Bargaining Agreement and for whom contributions were made to Central States (prior to the Withdrawal Date) will begin accruing benefits under the IBT Consolidated Pension Fund with respect to covered employment after the Withdrawal Date.

(2) The Employer will become a Participating Employer (through the Collective Bargaining Agreement) and will make contributions to the IBT Consolidated Pension Fund in accordance with the provisions of this MOU (which shall be incorporated into, and become a part of, the Collective Bargaining Agreement).

(c) The Employer will propose to Central States that the Employer will satisfy its withdrawal liability to Central States as follows:

(1) The Employer will propose paying its withdrawal liability (as determined in accordance with the terms, conditions and limitations of Title IV of ERISA, including without limitation, section 4219(c) of ERISA) via a transfer of the Employer Liabilities (defined in Section 2.6(a)) from Central States to the IBT Consolidated Pension Fund. The amount of Transferred Employer Liabilities (as determined using the

Central States funding assumptions and as valued without regard to any reduction in or suspension of such Employer Liabilities under Section 305(e)(9) of ERISA) shall not be less than the present value of 22 years of periodic withdrawal liability payments (as determined under Section 4219(c) of ERISA and using a 7.5% discount rate). If the Employer Liabilities (as determined using the Central States funding assumptions and as valued without regard to any reduction in or suspension of such Employer Liabilities under Section 305(e)(9) of ERISA) exceed the present value of 22 years of periodic withdrawal liability payments (as determined using a 7.5% discount rate), then the withdrawal liability of the Employer will be fully satisfied by virtue of the transfer of the Employer Liabilities. If the present value of the Employer Liabilities (as determined using the Central States funding assumptions and as valued without regard to any reduction in or suspension of such Employer Liabilities under Section 305(e)(9) of ERISA) is less than the present value of 22 years of periodic withdrawal liability payments (as determined using a 7.5% discount rate), then the excess will be paid by the Employer to Central States in a single lump sum cash payment.

- (2) Notwithstanding the provisions of paragraph (1) above, without further approval of the IBT, the Employer may negotiate with Central States to provide additional consideration in connection with a transfer of the Employer Liabilities, which in the aggregate is designed to be worth more to Central States than cash withdrawal liability payments; but in no event will the amount offered exclude any Employer Liabilities, affect the transfer of all of the Employer Liabilities, or have an aggregate value that is less than the amount determined in accordance with (1) above. In no event will the transfer include additional liabilities unless the IBT consents. The Employer will inform the IBT of its communications with Central States, Central States' responses, and the status of negotiations.
- (3) If Central States accepts the proposal of the Employer on or before May 1, 2016 regarding the satisfaction of its withdrawal liability through a transfer of Employer Liabilities, the Employer Liabilities will be transferred from Central States to the IBT Consolidated Pension Fund on the Withdrawal Date. In such event, the Employer will fund the Transferred Employer Liabilities in accordance with the provisions of Section 3.3(a).
 - (i) In the event that, prior to the transfer of the Employer Liabilities, there is any reduction in adjustable

benefits in accordance with Section 305(e)(8) of ERISA that occurs solely as a result of the Employer's classification as a withdrawing employer from Central States, the IBT Consolidated Pension Fund will restore such eliminated adjustable benefits (so that a transferred participant receives the benefit that would have been payable to the participant under Central States, determined as if the participant had incurred a "break in service" (as defined in the plan document for Central States) immediately prior to the Withdrawal Date, and there had been no withdrawal by the Employer). Any such adjustable benefits restored by the IBT Consolidated Pension Fund shall be treated as part of the Transferred Employer Liabilities for funding purposes. In addition, the IBT Consolidated Pension Fund shall restore any benefits that are forfeited by a participant who is not vested on the Withdrawal Date but who, taking into account service completed under the IBT Consolidated Pension Plan following the Withdrawal Date, would have become vested in the benefit accrued by the participant under Central States if the Employer had not withdrawn. The restoration of benefits by a non-vested participant (who becomes vested under the IBT Consolidated Pension Plan following the Withdrawal Date) shall include any associated adjustable benefits described in the first sentence that would have applied if the participant had been vested on the Withdrawal Date.

- (ii) In the event that, prior to the transfer of the Employer Liabilities, there is a reduction or suspension of benefits in accordance with Section 305(e)(9) of ERISA, the IBT Consolidated Pension Fund will restore such reduced or suspended benefits. Any such reduced or suspended benefits restored by the IBT Consolidated Pension Fund shall be treated as part of the Transferred Employer Liabilities for funding purposes.
- (4) The Employer shall have the right to contest any determination of its withdrawal liability (as determined in accordance with the terms, conditions and limitations of Title IV of ERISA, including without limitation, section 4219(c) of ERISA) in accordance with the provisions of 4221 of ERISA.

- (5) The transfer of Employer Liabilities shall be made in accordance with the provisions of ERISA and other applicable law.
- (6) The transfer of the Employer Liabilities must be completed by June 30, 2016; provided, however, that the June 30, 2016 deadline for the transfer of Employer Liabilities can be extended jointly by the IBT and the Employer, in their discretion. In the event that the date of the transfer is extended beyond June 30, 2016, the Withdrawal Date shall be extended and the Employer's complete withdrawal from Central States shall occur on the day before the actual transfer of the Employer Liabilities from Central States to the IBT Consolidated Pension Fund.

3.3 Employer Contributions to IBT Consolidated Pension Fund. The provisions of this Section 3 are premised on the specified powers expressly reserved to the bargaining parties pursuant to Sections 3 and 5 (including, without limitation, the direction by The Kroger Co. with respect to the investment and custody of plan assets), which reserved powers were an integral part of the funding commitment of the Employer contained herein. Except as otherwise provided in Section 3.3, the Employer shall, from time to time, make the contributions described in this Section to the IBT Consolidated Pension Fund:

- (a) The Employer shall fund 100% of the Transferred Employer UAAL as follows:
 - (1) The Employer shall fund 100% of the Transferred Employer UAAL in four installment contributions to the IBT Consolidated Pension Fund as follows:
 - (i) 50% of the Transferred Employer UAAL on the Transfer Date;
 - (ii) 16.67% of the Transferred Employer UAAL on or before the first anniversary of the Transfer Date;
 - (iii) 16.67% of the Transferred Employer UAAL on or before the second anniversary of the Transfer Date; and
 - (iv) 16.66% of the Transferred Employer UAAL on or before the third anniversary of the Transfer Date.
 - (2) Notwithstanding anything in Section 3.3(a)(1) to the contrary, in the event Third Party Logistic Providers representing a majority of the Third Party Logistic Providers (i.e., three out of five) enter into an MOU that is substantially identical to this MOU, and such MOU is ratified by the members of the IBT covered by the MOU by August 1, 2015, then the Employer shall fund 100% of the Transferred

Employer UAAL in four installment contributions to the IBT Consolidated Pension Fund as follows:

- (i) 70% of the Transferred Employer UAAL on the Transfer Date;
 - (ii) 10% of the Transferred Employer UAAL on or before the first anniversary of the Transfer Date;
 - (iii) 10% of the Transferred Employer UAAL on or before the second anniversary of the Transfer Date; and
 - (iv) 10% of the Transferred Employer UAAL on or before the third anniversary of the Transfer Date.
- (3) Notwithstanding anything in Section 3.3(a)(1) to the contrary, if all of the following conditions are met, then the Withdrawal Date shall be January 1, 2016 and the Employer shall fully (100%) fund the Transferred Employer UAAL within thirty (30) days of the Transfer Date:
- (i) The MOU is ratified by August 1, 2015;
 - (ii) On or before October 31, 2015, Central States agrees to a transfer of the Employer Liabilities to the IBT Consolidated Pension Fund.
 - (iii) On or before November 30, 2015, Central States notifies the PBGC of the transfer in accordance with Section 4231 of ERISA and requests a compliance statement in accordance with PBGC Reg. §4231.9 provided, however, that the requirement that Central States request a compliance statement can be waived by the Employer, in its discretion.
 - (iv) The ten-year yield on United States Treasuries is at or below 2.50% on any business day between December 31, 2015 and January 31, 2016.
- (b) In addition to the contributions required under subsection (a) above, the Employer shall contribute for each plan year the amount required for the Employer IBT Consolidated Pension Fund FA to be greater than or equal to zero as of the end of such plan year (as determined in accordance with Section 3.3(d) below).
- (c) For the initial plan year ending on December 31, 2016, the Employer shall contribute the amount estimated by the Plan actuary for the Employer IBT Consolidated Pension Fund FA to be greater than or equal to zero as of the end of the plan year ending December 31, 2016, with such contribution determined in accordance with Section 3.3(d)(1) and made in monthly installments commencing on the day after the Withdrawal Date. Subject to Section 3.4, contributions required under Section 3.3(b) for subsequent plan years (i.e., plan

years commencing on and after January 1, 2017) shall be paid in twelve (12) equal monthly installments on the first of each month during the plan year commencing on January 1, 2017 (except that the January payment shall be due on January 20th), with interest at the investment return assumption rate specified in Section 3.3(d)(2). Pending actuarial determination of the required contribution, contributions shall be based on the Plan actuary's best estimate of the contribution (to be completed and communicated to (1) the Employer and (2) the Board of Trustees by January 15th), if any, required under Section 3.3(b). To the extent the contribution initially estimated by the plan actuary is more or less than the amount that the Employer is actually required to contribute for a plan year based on the actuarial valuation for that plan year, the difference, with interest, will be credited or charged to the Employer's remaining installments for such plan year (with the difference allocated to the Employer determined in accordance with Section 3.3(d)(1) or (2), as applicable).

- (d) The amount of the required contributions by the Employer under Sections 3.3(a) and (b) shall be actuarially determined as follows:
- (1) Initially, the amount of the required contributions shall be determined in accordance with the following actuarial assumptions and methods:
 - (i) Funding method: Modified traditional unit credit whereby the normal cost and accrued liability for service on or after the Withdrawal Date is determined using the traditional unit credit method, and the total accrued liability is the sum of the accrued liability so determined for service on or after the Withdrawal Date plus the present value of benefits attributable to service prior to the Withdrawal Date.
 - (ii) Asset valuation: The actuarial value of assets shall be equal to the market value of assets as of the first day of the plan year (including the first day of any short plan year commencing after the Withdrawal Date), with subsequent actuarial investment gains and losses recognized over a five (5) year period.
 - (iii) Investment return: 7.5%, net of investment expenses.
 - (iv) Administrative expenses: If the administrative office for Central States is administering the Plan, the amount charged (or projected to be charged) by Central States for administering the Plan and dividing such administrative expenses by the number of participants in the Plan as of the relevant date, and then multiplying the per capita administrative

expense so determined by the number of participants in the IBT Consolidated Pension Fund attributable to the Employer.

(A) If the administrative office for Central States is not administering the Plan, the amount determined as follows:

(I) For any short plan year commencing after the Withdrawal Date, the amount determined by taking the administrative expenses charged to Central States (for the most recent period for which data is available), dividing such administrative expenses by the number of participants in Central States as of the last day of the period on which such administrative expenses were determined, multiplying the per capita administrative expense so determined by the number of participants in the IBT Consolidated Pension Fund attributable to the Employer and prorating the result based on the number of days in the short plan year, and then increasing the amount so determined by a factor of 25%.

(II) For the first full plan year commencing after the Withdrawal Date, the per capita amount determined under (I) above, increased by 10% times the number of participants in the IBT Consolidated Pension Fund attributable to the Employer.

(III) For each subsequent plan year, the actual expense for the prior year, increased by the increase in the Consumer Price Index for All Urban Consumers ("CPI-U") as of the end of the prior plan year, as published by the United States Department of Labor, Bureau of Labor Statistics.

(v) Salary increases: 2.5%.

- (vi) Pre-retirement mortality: RP-2000 Blue Collar Combined Mortality Projected to 2015 using Scale AA, separate tables for males and females.
 - (vii) Post-retirement mortality: Same as pre-retirement.
 - (viii) Turnover: same as used by Central States for 2014.
 - (ix) Disability: same as used by Central States for 2014.
 - (x) Retirement rates: same as used by Central States for 2014.
- (2) After the first plan year, the calculation of the Employer's required contributions under this Section 3.3 shall be performed in accordance with the funding method, asset valuation method, investment return assumption, and administrative expense assumptions used by the actuary for the IBT Consolidated Pension Fund in connection with the preparation of the actuarial valuation report for the IBT Consolidated Pension Fund.
- (3) The actuary's best estimate of the Employer's required contribution, as described in Section 3.3(c), will be based on the same data as used to make the determinations required in connection with the IBT Consolidated Pension Fund annual certification under Section 432(b)(3) of the Internal Revenue Code for that plan year, taking into account Section 3.3(i).
- (4) Required contributions shall be separately determined for the Employer and each other Participating Employer as if the IBT Consolidated Pension Fund (and the IBT Consolidated Pension Fund FA) were a separate pension plan maintained solely by the Employer or the other Participating Employers, as the case may be; provided, however, that if another Participating Employer withdraws from the IBT Consolidated Pension Fund and has failed to make a required contribution, the delinquent contribution shall be treated as an experience loss for purposes of determining the required contribution of the Employer and the other Participating Employers. In making this determination:
- (i) The Normal Cost Accrual shall be determined separately for the Employer and each other Participating Employer.
 - (ii) Contributions shall be separately allocated to the Employer and each other Participating Employer based on the employer that made such contributions.

- (iii) Administrative expenses shall be allocated between the Employer and the other Participating Employers based on headcount (i.e., the participants attributable to the Employer and the other Participating Employers).
 - (iv) Investment returns shall be assumed to be equal to the rate of return assumed by the plan actuary in preparing the actuarial valuation report for the IBT Consolidated Pension Fund.
- (e) Taking into account Section 3.3(i), in the event that the IBT Consolidated Pension Fund is in endangered, seriously endangered or critical status or critical and declining status, within the meaning of Section 432 of the Internal Revenue Code, for any plan year, the rehabilitation plan or funding improvement plan adopted by the Board of Trustees shall consist solely of contribution increases necessary to allow the IBT Consolidated Pension Fund to emerge from endangered, seriously endangered or critical status or critical and declining status within five (5) years from the date of the actuarial certification (without any changes to benefits earned or benefits to be earned in the future, including benefit rights and features), and any required funding notices or participant communications shall state that the required funding improvement plan or rehabilitation plan shall consist solely of contribution increases designed to allow the IBT Consolidated Pension Fund to emerge from endangered, seriously endangered or critical status or critical and declining status within such, five (5) year period and shall not include any changes to benefits earned or benefits to be earned in the future, including benefit rights and features. The plan actuary shall compute the amount of contribution increases required to meet the terms of such five (5) year funding improvement plan or rehabilitation plan. Notwithstanding the terms of this MOU or the expiration of the underlying Collective Bargaining Agreement, any contribution increases required by such funding improvement plan or rehabilitation plan shall be effective thirty (30) days after the Employer is notified of the required contribution increase. Notwithstanding anything herein to the contrary, the terms of a funding improvement plan or rehabilitation plan may be modified to include other changes (including benefit or funding modifications) pursuant to the amendment process described in Section 3.9.
- (f) Notwithstanding anything to the contrary, the contribution required by the Employer and the other Participating Employers shall in no event be less than the minimum contribution required under the Internal Revenue Code and ERISA or exceed the maximum contribution deductible under Section 404 of the Internal Revenue Code.

- (g) The IBT Consolidated Pension Fund actuary shall issue a written report to the Fund's Board of Trustees, the Employer, the IBT, and the IBT Local by November 15th of each year, which report shall show (1) the status of the Fund based on the measures of the funding obligation of the Employer, as described in Sections 3.3 and 3.4; (2) the required contribution, if any, by the Employer; and (3) the calculations and assumptions that form the basis for the conclusions reached in (1) and (2).
- (h) The Employer is obligated and required to comply with the terms and conditions of the IBT Consolidated Pension Fund, as amended from time to time, including, but not limited to, making contributions required under the Collective Bargaining Agreement and the terms of this MOU, as amended from time to time, and any successor agreements thereto.
- (i) Solely for purposes of determining the funding requirements under this MOU, the provisions of the Pension Protection Act of 2006, as amended, relating to the funding of multiemployer pension plans shall be deemed to apply (regardless of whether such provisions actually apply).

3.4 Additional Provisions with respect to the Employer's Contribution Obligation.

- (a) In the event that the Funded Ratio of the IBT Consolidated Pension Fund equals or exceeds 100% as of the last day of the prior plan year, the Employer shall not be obligated to make any installment contribution required under Section 3.3(a) with respect to the current or any subsequent plan year and the outstanding balance of the charge base shall be set to zero as of the last day of such prior plan year.
- (b) Notwithstanding anything herein to the contrary, no contribution shall be required under Section 3.3(b) for a given plan year to the extent that the minimum required contribution under the Internal Revenue Code is zero and:
 - (1) The Funded Ratio was at least 95% as of the end of the prior plan year, or
 - (2) The Funded Ratio was at least 90% as of the end of the prior plan year, and all of the following apply:
 - (i) For a prior plan year the Funded Ratio was at least 95%; and
 - (ii) The Funded Ratio was not below 90% for any plan year following the plan year referenced in (i) above.
- (c) If there is no required contribution under Section 3.4(b), then the outstanding balance of any gain/loss charge or credit base defined in Section 2.5(e) shall be set to zero.

- (d) Contributions required under Section 3.3(b) shall be reduced to the extent that such contributions exceed the minimum required contribution under the Internal Revenue Code and the amount of such contributions would cause the Funded Ratio to be more than 95% as of the end of such plan year.
- (e) The Employer may, in its sole and absolute discretion, elect to accelerate any or all installment payments required under Section 3.3(a) or any contributions required under Section 3.3(b), or to make additional contributions to the IBT Consolidated Pension Fund (even though no contributions are otherwise required under the provisions of Section 3.3).

3.5 Incorporation Into IBT Consolidated Pension Fund. The contribution obligation of the Employer hereunder shall be incorporated in, and become a part of, the IBT Consolidated Pension Fund.

3.6 No Interim Benefit Changes. The bargaining parties have expressly reserved the right to change benefits applicable to employees of the Employer under the IBT Consolidated Pension Fund. Except as provided in Section 6, no benefits earned or benefit provisions describing benefits to be earned in the future, including benefit rights and features, shall be changed, other than as a result of the amendment process described in Section 3.9 (scheduled to commence on or about the tenth (10th) anniversary of the Withdrawal Date). Any benefit modifications (including any elimination or modification of adjustable benefits) included in the terms of a rehabilitation plan previously adopted by Central States shall remain in effect (including any benefit modifications scheduled to take effect on or after the Transfer Date): provided, however, that, notwithstanding the forgoing, the IBT Consolidated Pension Fund shall restore (1) any reduction in adjustable benefits imposed by Central States in accordance with Section 305(e)(8) of ERISA solely as a result of the Employer's classification as a withdrawing employer from Central States, and (2) any reduction or suspension of benefits made by Central States in accordance with Section 305(e)(9) of ERISA.

3.7 Exclusive Funding Obligation. The bargaining parties have expressly reserved the right to change the contribution obligations of the Employer under the IBT Consolidated Pension Fund. With respect to hours of covered employment after the Withdrawal Date, the Employer will not have any obligation to contribute to Central States (and shall completely and permanently cease to have an obligation to contribute to Central States and therefore will withdraw therefrom), but will be obligated to contribute to the IBT Consolidated Pension Fund. The obligation of the Employer to make contributions to the IBT Consolidated Pension Fund is set forth fully and exclusively in this Section 3 (and can only be changed pursuant to the amendment process described in Section 3.9), and shall supersede any and all provisions of the Collective Bargaining Agreement (and any other collective bargaining agreement, participation agreement or plan provision)

that requires the Employer to make any contribution or payment with respect to Central States.

3.8 Reconsideration of Benefits and Funding.

- (a) This agreement was the result of the identification of common goals and extensive discussion among the parties as to ways to achieve those goals. The parties agreed that the IBT Consolidated Pension Fund was designed to provide reasonable and competitive retirement income based, at least in part, on the replacement ratio of pension benefits and Social Security (and assuming the continuation of Social Security) to final compensation (although no specific form or amount of retirement benefit is guaranteed). The benefits provided for by this agreement are viewed as reasonably reflecting that mutual goal. In addition, the parties agreed that the IBT Consolidated Pension Fund should have as its goal full funding, or nearly full funding, of accrued benefits, understanding that in the event of adverse investment experience, losses may need to be amortized over a period of time to avoid significant unanticipated annual funding obligations.
- (b) On or about the tenth (10th) anniversary of the Withdrawal Date, and every ten years thereafter, representatives of the Employer and the IBT Local shall review the extent to which the benefits provided by the IBT Consolidated Pension Fund and/or the funding obligation of the Employer to such Fund should be modified, if at all.
- (c) Consistent with the time periods for reconsideration established in Section 3.8(b), the Employer representatives or the IBT Local representatives may negotiate with respect to continued participation in the IBT Consolidated Pension Fund under the applicable funding and benefit terms of the IBT Consolidated Pension Fund. Such negotiations should be consistent with the parties' long-term goals (although no specific form or amount of retirement benefit is guaranteed). To the extent that the Employer representatives and IBT Local representatives agree on such participation, then the terms of such participation shall be presented for approval by the Employer and approval and ratification by the IBT Local (as an amendment to the Collective Bargaining Agreement). To the extent that the Employer representatives and IBT Local representatives cannot agree on negotiations regarding the IBT Consolidated Pension Fund, the status quo shall remain in effect until the expiration of the Collective Bargaining Agreement, as in effect at that time.

3.9 Amendment of Benefits and Funding. Except as provided in Section 6, any change in the benefits or the funding obligation of the Employer that is

proposed in accordance with the procedure contained in Section 3.8 must be approved by the Employer and the IBT Local.

4. Labor Costs.

- 4.1** For purposes of determining labor costs, the funding requirement of the Employer with respect to the IBT Consolidated Pension Fund will be treated by the Employer as follows (based on the assumptions stated herein and not actual experience):
- (a) For labor costing purposes, the Transferred Employer UAAL and interest thereon will be amortized in equal annual installments of principal and interest over a period of ten years.
 - (b) The Employer's share of the net charge or credit to the IBT Consolidated Pension FA for a plan year (as determined in accordance with Section 3.3(d)) will be charged or credited against labor costs on an annual basis.
- 4.2** On or before September 15th of each year (commencing September 15, 2016, if the Withdrawal Date is January 1, 2016 or September 15, 2017 if the Withdrawal Date is June 30, 2016), the Employer shall provide the IBT and each IBT Local covered by the Collective Bargaining Agreement with a written annual statement showing (1) the amount of the Transferred Employer UAAL and interest thereon charged during the preceding plan year; (2) the net charge or credit to the Employer IBT Consolidated Pension FA for the plan year; and (3) the cost per hour for the contribution amounts determined under (1) and (2).
- 4.3** To the extent there is a dispute over whether the Employer has failed to provide the information required by Section 4.2 or has failed to calculate the costs shown in the written annual statement in accordance with the principles contained in Section 4.1, then such dispute shall be subject to binding arbitration in accordance with the procedures set forth in Section 4.4.
- 4.4** In the event that the IBT Local believes that the Employer has failed to comply with the requirements of Section 4.1 or 4.2, the IBT Local may request (in writing) that the issue as to whether the Employer has complied with Sections 4.1 and 4.2 be submitted to binding arbitration (by a neutral arbitrator). The parties to the arbitration will be the IBT Local and the Employer. To the extent that there are similar arbitrations involving another Participating Employer(s), such arbitrations shall be consolidated into a single proceeding and the parties will be the Participating Employers and IBT Locals involved; provided that the IBT may be a party at its discretion. The neutral arbitrator shall be selected jointly by the IBT Local (or by the IBT if the IBT elects to be a party) and the Employer (or jointly by the

Employer and the other Participating Employers if the arbitration involves more than one Participating Employer). If the Employer and the IBT Local (or the Participating Employers and the IBT if the IBT elects to be a party) cannot agree on a neutral arbitrator within ten (10) working days after the notice invoking arbitration, either party may request the American Arbitration Association (“AAA”) to furnish a list of seven (7) persons. The Participating Employer and the IBT Local (or the Participating Employers and the IBT if the IBT elects to be a party) shall determine by lot the order of elimination and thereafter each shall in that order eliminate one (1) name until only one (1) name remains. The remaining person on the list shall be the neutral arbitrator. Each of the parties shall bear its own expenses in the conduct of such proceedings (including the expenses of its own counsel, actuaries, experts and other witnesses), and the parties shall jointly bear the expense of the neutral arbitrator and the arbitration proceedings (e.g., transcripts). The arbitrator shall hear evidence and arguments on all matters in dispute as expeditiously as practical. Such arbitration shall be conducted in accordance with the rules of the AAA applicable to labor disputes. The arbitration will be held in Washington, D.C.

5. **Governance of IBT Consolidated Pension Fund.** The governance of the IBT Consolidated Pension Fund, including the composition of the Board of Trustees, the rights and duties of the Board of Trustees and the rights and duties of The Kroger Co., as the named fiduciary of the IBT Consolidated Pension Fund with respect to the custody and investment of plan assets, shall be determined in accordance with, and governed by, the IBT Consolidated Pension Fund and the trust agreement adopted in connection therewith.

6. **Terms of the IBT Consolidated Pension Fund.**

The terms of the plan document and trust agreement for the IBT Consolidated Pension Fund (other than plan benefits and the funding obligation of the Employer and the other Participating Employers) will be subject to amendment by the Board of Trustees, and disputes regarding any such amendment shall be subject to binding arbitration in accordance with the procedures set forth in the trust agreement for the IBT Consolidated Pension Fund. Except for amendments that are required in order to maintain the qualification of the IBT Consolidated Pension Fund under part I of subchapter D of chapter 1 of the Internal Revenue Code, or which are otherwise required to comply with other applicable law, benefits provided by, and the funding obligation of the Employer with respect to, the IBT Consolidated Pension Fund can only be changed pursuant to the process set forth in Sections 3.8 and 3.9.

7. **Incorporation into Collective Bargaining Agreement.**

The provisions of this Memorandum of Understanding shall constitute a supplement (and amendment) to the Collective Bargaining Agreement (and any other collective bargaining agreement of the Employer covering any participant in the IBT Consolidated Pension Fund or Central States) that can only be changed,

pursuant to the amendment process described in Sections 3.8 and 3.9 (scheduled to commence on or about the tenth (10th) anniversary of the Withdrawal Date).

8. Term.

The terms of this Memorandum of Understanding shall continue in full force and effect until amended, modified or terminated in accordance with the same amendment process described in Sections 3.8 and 3.9 (scheduled to commence on or about the tenth (10th) anniversary of the Withdrawal Date This Memorandum of Understanding may be terminated at any time after the tenth (10th) anniversary of the Withdrawal Date in accordance with the amendment process described in Sections 3.8 and 3.9.

9. Separate Employers

Nothing in this MOU, its execution, the discussions leading to its execution, shall create or be used, or offered as evidence, in any forum to create a joint employer, single employer, alter ego, agency, successor relationship between and among the Employer and any other Participating Employer.

10. Approval/Ratification.

The implementation of this Memorandum of Understanding is subject to and conditioned upon approval by the Employer and the IBT Local and ratification under the IBT rules.

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.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL _____

By: _____
Date

[Insert name of Employer]

By: _____
Date