

AGREEMENT

BY AND BETWEEN

DAMIANO OF DULUTH, INC.

AND



UNITED FOOD AND COMMERCIAL WORKERS UNION
LOCAL No. 1189

July 1st, 2020 through June 30th, 2023

UFCW LOCAL #1189 OFFICE
218-728-5174

WEB: www.ufcw1189.org

WILSON MCSHANE
Health Care
218-728-4231

AGREEMENT
BY AND BETWEEN
DAMIANO OF DULUTH, INC.
AND
UNITED FOOD AND COMMERCIAL WORKERS UNION
LOCAL No. 1189

Article Number		Page Number
	Purpose and Intent	3
1	Recognition	3
2	Union Security	4
3	Holidays	5
4	Vacations	6
5	Leaves	7
6	Sick Time	9
7	Seniority – Definitions/Applications	10
8	Discharge/Termination	11
9	Grievance/ Arbitration Procedure	12
10	Insurance Plans / Pension	13
11	Hours Of Work	14
12	Wages	15
13	Miscellaneous	16
14	Working Environment	18
15	Non-discrimination	18
16	Prohibition Of Strikes And Lockouts	18
17	Conflict With Law	18
18	Management Rights	19
19	Supersedure	19
20	Notices	19
21	Term of Agreement	20
	Exhibit A	21
	Letter of Understanding	22
	Letter of Understanding	23

AGREEMENT

This Agreement, made and entered into this 1st day of **July, 2020**, by and between Damiano of Duluth, Inc., hereinafter referred to as the “Employer,” and United Food and Commercial Workers Union, Local No. 1189, Duluth, Minnesota, chartered by the United Food and Commercial Workers International Union, hereinafter referred to as the “Union.”

ARTICLE 1 RECOGNITION

1.1 Recognition:

The Employer recognizes the Union as the sole and exclusive bargaining agent for all full-time and regularly scheduled part-time employees employed by the Employer at or out of the Employer’s place of business in Duluth, Minnesota; excluding guards and supervisors as defined in the National Labor Relations Act, the Executive Director, Assistant Director, Development **person**, the **Accounting person**, and the Community Kitchen Manager.

1.2 Individual Contract – The Employer shall not enter into any agreement with the employees coming under the jurisdiction of this Agreement either individually or collectively, which in any way conflicts with the terms and conditions of this Agreement.

1.3 Stewards:

The Union shall maintain on file with the Employer a current list of Stewards. The Employer shall recognize all employees on this list as Stewards. The number of Stewards shall be that which is necessary to provide appropriate representation for all employees.

1.4 A Steward’s duties shall include:

- a) Investigation of grievances by bargaining unit employees;
- b) Discussion of working conditions and other labor relations matters with representatives of the Employer as requested by the Steward;
- c) Attendance as requested by any bargaining unit employee during any questioning by the Employer about any matter that could lead to any disciplinary action against the employee; and,
- d) Union training, meetings and events. Meetings and events shall be preceded by reasonable written notice to the Employer. No more than two (2) Stewards may be absent at any given time for such purposes.

The Employer shall provide to the Stewards as a group (not to each Steward individually) up to two (2) hours of paid time per month for a) through d), above. All other time spent by Stewards on a) through d) above, or on any other Union or bargaining unit business, shall be unpaid. If the Employer requests to meet with or have a Steward present at a meeting, the Steward’s time shall be paid and shall not count against the two (2) hour allowance.

1.5 Contracting Out:

The Employer agrees that it shall not contract out any work to vendors or non-bargaining unit workers where a bargaining unit employee, on the payroll working under forty (40) hours per week, or on layoff with recall rights, is qualified and willing to perform the work.

1.6 New Classifications

If the Employer creates a new job classification within the bargaining unit, the Employer shall give written notice to the Union, including the proposed wage for the classification. The Union shall have ten (10) days to object in writing to the proposed wage. In the meantime, the Employer may implement its proposed wage. If timely objection is made, the parties shall meet and negotiate over the objection. Failing agreement within sixty (60) days after the objection is made; either party may invoke the arbitration procedures of this Agreement to resolve the disagreement. A demand for arbitration shall be in writing and shall be considered timely if made within ten (10) days after the sixty (60) day negotiation time frame expires. The arbitrator shall have the power to resolve only the objection made by the Union and no other issue, and the arbitrator shall issue an interest arbitration award fixing the wage for the new classification.

**ARTICLE 2
UNION SECURITY**

2.1 Union Security:

All employees shall, as a condition of continued employment, become and remain members in the Union, and all employees subsequently hired shall become members of the Union on or after the thirtieth (30th) day following hiring. An employee may choose, however, in lieu of Union membership, to pay the Union a service fee, representing that portion of the usual and customary Union dues and fees attributable to collective bargaining, grievance processing, and contract administration. The Union shall defend, indemnify, and hold the Employer harmless of and from any claim or suit by an employee arising out of application of this paragraph. Employees working less than an average of eight (8) hours per week during a month shall be exempt from this section. This exemption shall be limited to three (3) employees per month.

2.2 Union Affiliation:

Upon hiring, each employee shall be provided by the Employer with a Union application form. The Union shall keep the Employer supplied with the forms. If the employee completes the form and returns it to the Employer, the Employer shall forward it to the Union.

2.3 Dues Checkoff:

The Employer shall deduct Union dues and service fees from the earnings of any employee who has executed and provided to the Employer a written check-off authorization form. The Union shall certify to the Employer the amounts to be deducted. The Employer shall

make such deduction from each paycheck and shall remit the deductions to the Union by the 10th of the month following the month in which the deductions were made.

2.4 Liability:

The Union shall defend, indemnify, and hold the Employer harmless against any and all suits, claims, demands, and liabilities that arise out of or by reasons of any action taken by the Employer for purposes of complying with Section 2.3, or in reliance on any lists, notices, or authorizations that shall have been furnished to the Employer by an employee or the Union.

2.5 Probation:

New hires shall be on probation for the first sixty (60) calendar days of employment. Notwithstanding the foregoing, the Employer may extend the probationary period an additional thirty (30) calendar days, so long as the Employer gives advance written notice of the extension to the Union. During probation, whether initial or extended, the Employer may discipline or discharge the employee at will. Such discipline or discharge shall not be subject to the grievance and arbitration procedure of this Agreement and shall not be considered a breach of this Agreement. Probationary employees shall neither receive, earn, nor utilize any kind of fringe benefit or paid time off including, but not limited to, insurance coverage, vacation, and sick leave. Upon successful completion of probation, the employee's seniority shall be back dated to the time of hire, the employee shall be given credit towards fringe benefits for the work performed during probation, and the employee shall be eligible to receive, earn, and utilize all fringe benefits for which the employee may otherwise qualify, except that there shall be no retroactive enrollment in any group insurance plan.

2.6 Orientation:

The Employer will allow a representative of the Union or a steward who is on duty, twenty (20) minutes of paid time with new employees during the Employer's scheduled orientation to review this Agreement and other Union matters.

ARTICLE 3 HOLIDAYS

Employees working twenty-four (24) or more hours per week shall receive eleven (11) paid holidays each year. They are:

New Year's Day	Indigenous Peoples' Day
Martin Luther King Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Juneteenth	Christmas Eve Day
Fourth of July	Christmas Day
Labor Day	

For employees who do not work on weekends, if a holiday falls on a Saturday, it shall be observed on the preceding Friday; and if a holiday falls on a Sunday, it shall be observed on the following

Monday. With three (3) weeks' advance approval from the Employer, an employee may for religious or cultural reasons substitute another holiday for a holiday listed above. If the employee does not work on the holiday, he or she shall nonetheless be paid for that day based on his or her regular hourly wage for the number of hours the employee normally works in a day. If the employee works on the holiday, he or she shall be paid at one and one-half (1½) times his or her regular hourly wage for all hours worked. Hours worked on Easter shall be paid at time and one-half (1 ½), **but otherwise Easter is not considered a holiday under this Agreement. Any time and one-half (1 ½) pay paid under this Article shall not be pyramided** with overtime that might otherwise be due for that week. Holidays that occur while an employee is on vacation or sick leave shall not count against the employee's vacation or sick leave time.

Employees working less than twenty-four (24) hours per week shall be paid at one and one-half (1½) times his or her regular hourly wage for all hours worked on a holiday **or on Easter.**

If the Christmas Eve Day and Christmas Day holidays fall on Friday and Saturday, or on Sunday and Monday, employees eligible for holidays shall receive one (1) paid day off work within thirty (30) days before or thirty (30) days after that week-end, with the scheduling of the specific day subject to approval of the Employer.

Employees shall receive one (1) paid personal day off from work each **calendar** year. The personal day shall be based upon the number of hours an employee normally works in a day. Requests to use the personal day should be submitted to the Employer as soon as practicable. Requests will not be unreasonably refused, taking into account staffing needs.

ARTICLE 4 VACATIONS

4.1 Vacation Chart:

Employees working forty (40) hours per week shall receive paid vacation during each anniversary year of their employment based on the following chart:

<u>Years of Service</u>	<u>Paid Vacation Hours Per Anniversary Year</u>	<u>Paid Vacation Hours Per Paid Employment Hour</u>
00-03	128	0.061539
04-06	168	0.080770
07-09	208	0.100000
10 or more	248	0.119231

Employees working twenty-four (24) or more but less than forty (40) hours per week shall receive pro rata paid vacation during each anniversary year of their employment based on their number of work hours per week as compared to forty (40).

Employees having at least four (4) years of seniority and working less than twenty-four (24) hours per week shall receive two (2) weeks of pro rata paid vacation during each anniversary year of their employment based on their number of work hours per week as compared to forty (40).

Weeks an employee is on a leave of absence shall not be factored into the calculation of the hours worked per week. Vacation shall not be taken before it is earned.

4.2 Carryover:

An employee working forty (40) hours per week may carry over earned but unused vacation hours into his or her next anniversary year. The carryover shall be limited to the number of vacation hours earned in the immediately preceding anniversary year. Excess amounts shall be cashed out at the end of the **anniversary** year. The carryover amount shall be prorated for employees working less than forty (40) hours per week.

4.3 Scheduling:

Vacation requests should be submitted to the Employer as soon as practicable. All vacation requests must be approved by the Employer. The Employer shall grant approval unless the employee's absence would result in inadequate coverage. In cases of conflicting vacation requests, seniority shall prevail.

4.4 Cash Out:

Earned but unused vacation shall be cashed out when the employee is separated from employment. However, in cases of resignations there will be no cash out if less than two (2) weeks' notice is given.

An employee may cash out one (1) week per year of earned but unused vacation. Written notice of the desire to cash out shall be given by the employee to the Employer at least twenty-eight (28) days prior to the pay day on which the employee desires to be paid for the vacation.

4.5 Sharing:

Employees may share vacation time with each other, provided that both employees give notice to the Employer.

**ARTICLE 5
LEAVES**

5.1 Requests:

All leaves shall be preceded by thirty (30) days' written request if at all possible. In other cases, the written request shall be made as soon as practicable.

5.2 Medical:

Medical leave, taken for such reasons as death in the family, or to care for the employee's spouse, child, or parent who has a serious health condition, shall be granted by the Employer for up to twelve (12) weeks per year. Medical leave, taken for the employee's own medical necessity or chemical dependency treatment, shall be granted by the Employer for up to twelve (12) months. The employee shall furnish medical proof of the need for time off at the outset of any medical leave and, for medical leaves lasting longer than twelve (12) weeks, every month after the initial twelve (12) weeks. Upon return from a medical leave, the employee shall be reinstated to his or her former position, with the pay, benefits and other employment terms as set forth in this Agreement. An employee's health/life insurance coverage shall be maintained for the duration of a medical leave, provided that the employee timely pays his or her share of the premium.

5.3 Parental:

Employees with one (1) or more years of seniority shall be granted parental leave in conjunction with the birth, adoption, or foster care placement of a child. The leave shall not exceed twelve (12) weeks. Upon return from a parental leave, the employee shall be reinstated to his or her former position, with the pay, benefits and other employment terms as set forth in this Agreement. An employee's health/life insurance coverage shall be maintained for the duration of a parental leave, provided that the employee timely pays his or her share of the premium.

5.4 Personal:

Employees with one (1) or more years of seniority shall be granted leaves of absence not to exceed twelve (12) months for reasons not covered elsewhere in this Article, such as leaves for completing or furthering the employee's education. The Employer reserves the right to delay or deny a personal leave if the Employer has an immediate and urgent need for the employee's services in the short term or if the leave would result in too many employees being absent concurrently.

5.5 Military:

The Employer and the Union support those who serve in the active military, the reserves, and the National Guard. The Employer and the Union intend to, and agree to, fully honor all obligations set forth in the law pertaining to military leaves of absence.

5.6 Jury Duty:

If called to jury duty, the employee shall give notice to the Employer as soon as practicable. An employee serving on jury duty shall receive his or her usual pay for the period he or she is required to serve. The employee shall be required to return to the Employer all fees received while on jury duty, less expenses incurred in serving on jury duty (meals, parking fees, mileage, etc.). An employee released from jury duty more than two (2) hours before his or her normal quitting time shall report for work for the balance of the day, if he or she would have been otherwise scheduled to work for the balance of the day.

5.7 Replacements:

The Employer may supplement the work force with temporary workers or temporary agency personnel to cover for an employee on a leave of absence or other authorized absence, or to provide staffing assistance for special projects or during times of high work load. The Employer shall not use temporaries if a Bargaining Unit employee, on the payroll working under forty (40) hours per week, or on layoff with recall rights, is qualified and willing to perform the work. Temporaries shall not be covered by this Agreement.

5.8 Return from leave:

If an employee fails to return from a leave as scheduled, he or she shall be deemed to have resigned. For leaves originally scheduled to last three (3) or fewer months, an employee may return to work before the scheduled ending date of a leave. For longer leaves, an employee may request to return to work before the scheduled ending date. The Employer

shall not deny the request in the absence of a legitimate reason, including but not limited to, employment assurances made to a replacement worker and lack of work.

5.9 Benefits while on leave:

All leaves (other than jury duty) shall be unpaid, except that any available paid vacation time shall be used during any non-medical leave. In cases of medical leaves, the employee shall have the option but not the obligation to use any available paid vacation time. Unless otherwise set forth above, no fringe benefits shall be provided during a leave. Seniority shall accumulate during a leave.

ARTICLE 6 SICK TIME

6.1 Rate of Accumulation:

Employees **hired for** forty (40) hours per week shall be granted sixty-four (64) hours of sick time upon hiring, prorated for the balance left in the year of hiring.

Each January 1st employees **being paid an** average of forty (40) hours per week shall be granted sixty-four (64) additional hours of sick time. Employees **being paid** an average of less than forty (40) hours per week shall be granted sick time on a prorated basis based on hours **paid**.

6.2 Total Accumulation:

Sick time may be accumulated year to year up to a maximum of two hundred and forty (240) hours per employee.

6.3 Use:

Employees may use sick time for their own illness or injury, for their own medical (physical and mental) and dental appointments, to care for an ill or injured immediate family member, to attend a medical (physical or mental) or dental appointment with an immediate family member, to attend the funeral of an immediate family member, co-worker, or close friend, and for parental leave following the birth or adoption of a child.

6.4 Notification:

An employee using sick time for any reason shall notify his or her supervisor before the start of his or her shift. During the week (Monday through Friday), the employee shall give the notice to the supervisor's office voice mail phone number. Each supervisor shall advise his or her employees of the phone number to use for notices on weekends. If the Employer has a reasonable suspicion that an employee is abusing sick time, the Employer may require the employee to provide proof supporting the use of sick time.

6.5 Sharing:

Employees may share sick time with each other, provided that both employees give notice to the Employer. The recipient must have exhausted his or her own sick leave in order to receive such leave from others. Sick Leave must be donated in four (4) hour increments,

subject to a maximum of **four (4) hours per week per donor, with an annual limit of forty (40) hours per donor.**

ARTICLE 7 SENIORITY – DEFINITIONS - APPLICATIONS

7.1 Seniority Defined:

Seniority is defined as the length of unbroken service with the Employer, effective from the employee's last date of hire. Seniority shall be broken by any of the following circumstances:

- a) Discharge;
- b) Resignation **more than ninety (90) days old, it being understood that whether to re-hire the resigned employee within the ninety (90) day window will be at the sole discretion of the Employer;**
- c) Failure of the employee to return to work upon written recall from layoff;
- d) Continuous layoff of greater than twelve (12) months;
- e) Retirement;
- f) Failure of employee to return to work from a leave of absence;
- g) Engaging in other employment while on a leave of absence; this subsection shall not apply to employees taking on part-time work elsewhere during an education leave of absence or to employees already working elsewhere at the time the leave of absence commences;
- h) Failure to re-apply for work within the statutory time limit following completion of a military leave of absence;
- i) Continuous absence from work for more than six (6) months for any other reason.

7.2 Layoffs:

A. Seniority shall prevail in all layoffs, hours reductions, and recalls. Employee(s) to be laid off or reduced in hours shall be chosen from those working in the affected program(s). Seniority may be exercised for layoff and recall (but not hours reductions) against more junior employees; provided that the employee is qualified to do the work of the junior employee and works at the contract rate for the position claimed. Written notice of a layoff or hours reduction shall be given to the Union and the affected employees as soon as practicable after the Employer decides to implement the layoff or hours reduction.

B. The Employer shall negotiate with the Union over the effects on bargaining unit employees of any layoffs or reduced hours, but the effects bargaining shall not delay implementation of the layoff or hours reduction.

7.3 Recall:

Subject to the above seniority rules, a laid off employee reserves the right to recall back to the employee's position or to any other open position for which the employee is qualified and willing to fill.

Subject to the above seniority rules, an employee working reduced hours reserves the right to claim his or her hours if the hours are restored by the Employer.

7.4 Job Postings:

When an opening occurs in a job classification covered by this Agreement, it shall be posted for ten (10) calendar days before it is filled. If there is only one (1) qualified bidder, the opening shall be awarded to him or her. If there is more than one (1) qualified bidder, seniority shall be one of several factors considered, including job performance, attendance record (if extensive), and discipline history in the prior six (6) months.

7.5 Seniority Retention:

No employee shall lose seniority because of a leave of absence or illness or injury or for vacation time, unless seniority is broken for a reason set forth above.

ARTICLE 8 DISCHARGE - TERMINATION

8.1 Just Cause Employment Termination:

The Employer shall not discipline, suspend, or discharge an employee without just cause and without following these progressive discipline steps:

- (1) first written warning
- (2) second written warning
- (3) unpaid suspension of three (3) or less scheduled work days
- (4) discharge.

One or more progressive discipline steps may be skipped in cases of serious misconduct, including but not necessarily limited to, theft, violation of the illegal drugs and alcohol policy, violation of the handgun and firearm policy, assault, willful falsification of any Employer record, insubordination, proven sexual harassment, willful breach of client or consumer confidentiality policy, job abandonment, and willful destruction of property.

A first or second written warning shall not remain in effect, nor remain in the employee's personnel file, for a period of more than twelve (12) months from the date of the written warning. A written unpaid suspension shall not remain in effect, nor remain in the employee's personnel file for a period of more than eighteen (18) months from the date of the written suspension.

8.2 Written Notice:

All warnings, suspensions, and discharges shall be in writing on a form labeled as such with a copy to the affected employee and to the Union. The document shall state the date

of the warning, suspension, or discharge, the date and nature of the infraction, the progressive discipline step being invoked by the Employer, and the consequences to the employee of further infractions.

8.3 Grievance of Discipline:

All warnings, suspensions, and discharges are subject to challenge through the grievance machinery and arbitration set forth in this Agreement.

8.4 Resignations:

An employee voluntarily terminating employment shall try to give the Employer four (4) weeks' advance written notice of such termination. The Employer may refuse to allow vacation time during the last two (2) weeks of the four (4) week notice period.

ARTICLE 9 GRIEVANCE - ARBITRATION PROCEDURE

9.1 Definition:

A grievance shall be defined as any controversy arising over the interpretation of or the adherence to the terms and provisions of this Agreement.

9.2 Grievance Steps:

Step 1 – The aggrieved employee or a UFCW representative shall within ten (10) days of the event giving rise to the grievance informally discuss the grievance with the employee's first line supervisor or designee in an attempt to resolve the grievance. Grievances involving discharge or suspension shall begin at Step 2. For purposes of a grievance based on a wage claim, "the event giving rise to the grievance" shall be defined as the pay day on which the subject pay check or direct deposit receipt is issued.

Step 2 – If the grievance is not resolved at the time of the Step 1 informal discussion, it shall be reduced to writing on a grievance form or Union letterhead and submitted to the Executive Director or his or her designee. The written grievance must be submitted within ten (10) days after the meeting at Step 1, or after the discharge or suspension, as the case may be, or it shall be considered as withdrawn and not subject to further processing or to arbitration. Within ten (10) days of receipt of the grievance, the Executive Director or his or her designee shall respond to the grievance in writing.

Step 3 – If the grievance is not resolved at Step 2, either party may request grievance mediation with the Federal Mediation and Conciliation Service or the Bureau of Mediation Services. This step is voluntary and must be agreed to by both parties. The opinion of the mediator will not be binding on either party. This step must be requested within ten (10) days of receipt of the response by the Executive Director or his or her designee in Step 2.

Step 4 – If the grievance is not resolved in Step 2, or in Step 3 if used, either party may refer the matter to arbitration. Any demand for arbitration shall be in writing and must be received by the other party within ten (10) days following receipt of the Executive Director's or his or her designee's written response to the grievance at Step 2 or within ten (10) days of the Step 3 mediation if used.

9.3 Arbitrator Selection:

If a grievance is arbitrated, the moving party shall submit a request for an arbitration panel to the Federal Mediation and Conciliation Services or the Bureau of Mediation Services. The list shall consist of seven (7) names. The arbitrator shall be selected by the parties alternately striking names until one (1) arbitrator is left. The order of strikes shall be determined by lot or by the flip of a coin.

9.4 Arbitrator Decision:

The arbitrator shall have jurisdiction only over grievances that may arise under this Agreement, and the arbitrator's decision shall be rendered only in accordance with the language of this Agreement. The decision of the arbitrator shall be final and binding upon the grievant, the Union, the Employer, and all employees. However, the arbitrator shall not have the power to add to, subtract from, or modify the terms or conditions of this Agreement.

9.5 Expenses:

The fees and expenses of the arbitrator shall be borne equally by both parties. The expenses of any transcription or hearing room shall be borne equally by both parties, if the parties so agreed in advance.

9.6 Union Authority:

At any step in this grievance and arbitration procedure, the Executive Committee of the Local Union shall have the final authority, in respect to any aggrieved employee covered by this Agreement, to decline to process a grievance, complaint, difficulty or dispute further if in the judgment of the Executive Committee such grievance or dispute lacks merit or lacks justification under the terms of this Agreement, or has been adjusted or justified under the terms of this Agreement, to the satisfaction of the Union Executive Committee.

9.7 Time:

For purposes of this grievance and arbitration procedure, Saturdays, Sundays and holidays recognized by this Agreement shall be excluded from the computation of time limits. The time limits in this grievance and arbitration procedure may be extended by written agreement signed by both parties, or by verbal agreement promptly confirmed by a letter or email from one of the parties to the other.

ARTICLE 10 INSURANCE PLANS - PENSIONS

10.1 Health and Welfare:

All employees regularly scheduled to work twenty-four (24) or more hours per week shall be covered by the Northern Minnesota-Wisconsin Area Retail Food Health and Welfare Fund. The employee shall reimburse the Employer fifteen dollars (\$15.00) per pay period towards the cost of single coverage and the Employer shall pay **each month the ARGA rate in effect July 1, 2020, or \$675.00**, whichever is less. **Effective January 1, 2021, the employee shall continue to reimburse the Employer fifteen dollars (\$15.00) per pay period towards the cost of single coverage and the Employer shall pay each month**

the ARGA rate in effect January 1, 2021, or \$690.00, whichever is less. Employees electing family coverage shall pay the incremental cost above the cost of single coverage. Health Care Contribution amounts as determined by the trustees are due in the trust office no later than the 20th of the month for coverage for the following month.

10.2 Retirement:

A. The Employer shall keep in full force and **effect** the current SEP IRA plan, including but not limited to the three (3) year waiting period, the five percent (5%) contribution level, the eligibility threshold (regularly scheduled for twenty-four [24] or more hours per week), and 100% vesting.

B. The Employer shall keep in full force and affect the current 403(b) plan, including but not limited to no waiting period and no eligibility threshold.

ARTICLE 11 HOURS OF WORK

11.1 Overtime:

All work performed in excess of forty (40) hours in a week, Sunday through Saturday, shall be paid at time and one-half (1½) the employee's regular rate of pay. All work in excess of eight (8) hours in a day mandated by the Employer shall be paid at time and one-half (1½) the employee's regular rate of pay. Overtime pay shall not be duplicated for the same hours worked, and to the extent that hours are compensated as overtime hours under one provision of this Agreement or law they shall not be compensated as overtime hours under any other provision of this Agreement or law. The Employer shall not be required to offer work or to make a schedule that causes overtime hours. Paid non-working hours shall not count as hours worked for purposes of determining when overtime pay becomes due.

11.2 Lunch Period:

An unpaid lunch period of thirty (30) minutes shall be provided to any employee working more than six (6) consecutive hours in a shift. If the employee eats his or her lunch on premises, the lunch period shall be paid. Such a paid lunch period shall not count towards the daily overtime rule of section 11.1.

11.3 Breaks:

A paid break of fifteen (15) minutes shall be provided during each four (4) consecutive hours worked by an employee.

11.4 Flex Schedules:

An employee may choose to change his or her start and stop times (flex schedule) under the following conditions:

- a) The employee shall be responsible for insuring that his or her duties and responsibilities are covered by another employee or can be satisfactorily performed by the employee during the flex schedule.

- b) The employee shall obtain approval from his or her supervisor for the flex schedule, which approval shall not be unreasonably withheld. An employee's first good faith failure to obtain approval shall result only in non-disciplinary counseling about this requirement.
- c) Hours worked under a flex schedule shall not count towards the daily overtime rule of section 11.1.
- d) A flex schedule shall not provide for more than forty (40) hours of work in a week.
- e) A flex schedule shall not change the total number of hours of work for the employee in a week.
- f) A flex schedule shall not include any work time prior to 7:00 a.m. or subsequent to 9:00 p.m.

11.5 Effect on Layoffs and Hours Reductions:

Nothing in this Article shall be construed as limiting the Employer's rights to layoff or reduce the hours of employees, subject to the provisions of Article 7.

ARTICLE 12 WAGES

12.1 Mileage:

Employee use of a personal vehicle at the Employer's request shall be reimbursed at the IRS mileage rate then in effect. Employee use of a personal vehicle at the employee's choice shall also be reimbursed at the IRS mileage rate then in effect; provided, however, that the employee shall first confirm that there are program funds available to pay for mileage. **A claim for mileage reimbursement must be submitted within sixty (60) days after the mileage was incurred.**

12.2 Payroll:

Payroll shall be measured by a bi-weekly pay period. Pay day shall be the Thursday following the last day of the pay period. The Employer shall make direct payroll deposit available to the employees at their option.

12.3 Rates of Pay:

See Exhibit A.

12.4 Lead Persons:

The Employer may appoint a bargaining unit employee to serve as lead person for Buildings and Maintenance. In addition to his or her normal duties, the lead person shall have the responsibility and power, under the direction of the Employer, to assign work and to monitor and report on work performance and operations within the Buildings and Maintenance area.

The lead person shall not be considered a supervisor under the National Labor Relations Act; and, in particular, shall have no responsibility or power to hire, discipline, or discharge

any employee. The Employer reserves the right to revoke the appointment of any lead person.

12.5 Working in Other Job Classifications:

If an employee works out of the employee's job classification, the employee shall be paid at the hourly rate of his or her original job classification, or at the hourly rate of the other job classification, whichever is greater. If an employee routinely works in more than one (1) job classification, he or she shall be paid for all hours worked in all of the job classifications at the highest hourly rate of any of the job classifications. A Program Assistant working out of that job classification in any higher paying Coordinator job classification shall be paid at the Program Assistant hourly rate plus half the difference between that rate and the Coordinator hourly rate.

12.6 Clothing and Equipment:

The Employer shall pay \$20.00 per month towards the cost of work uniform rental for the Building Maintenance Coordinator. The employee shall provide proof of the expense from the vendor.

ARTICLE 13 MISCELLANEOUS

13.1 Performance Evaluations:

Any and all performance evaluations of bargaining unit employees shall be in writing.

13.2 Mailbox:

One locked mailbox on-site at the Employer's place of business shall be made available by the Employer for the receiving of mail by the bargaining unit.

13.3 Bulletin Boards:

The Employer shall designate a bulletin board for the posting of Union notices. The board shall be located in an area frequented by employees but not necessarily visible to the public.

13.4 Union Button:

Members of the Union may wear a Union button when on duty.

13.5 Second Job:

No employee shall be denied the right to work for another employer, as long as such second job does not interfere with the employee's duties and responsibilities for the Employer.

13.6 References:

When asked to give a reference to another employer about an employee currently or formerly covered by this Agreement, the Employer shall state only the original date of hire,

the date of separation if no longer employed, and position held. An employee may request a letter of reference from the Employer.

13.7 Department Administration:

Subject to the supervision of the Employer, department managers, a/k/a department coordinators, covered by this Agreement shall have reasonable latitude to exercise their judgment in the administration of their departments, including how to best accomplish assignments within the scope of the directions given, and may consult with and recommend to the Employer resource allocation within department fiscal and time constraints.

13.8 Measurement of Time:

Unless otherwise specified in this Agreement, references to “days,” “weeks,” “months,” and “years” shall mean calendar days, calendar weeks, calendar months, and calendar years, respectively.

13.9 Illegal Drugs and Alcohol Policy:

No employee shall use, sell, solicit, possess, or transfer drugs or alcohol while working or while on any Employer premises (including parking lots) or Employer work sites, wherever located. No employee shall report to or be at work under the influence of drugs or alcohol, wherever such work is being performed, including off Employer property. No employee shall operate any Employer vehicle, machinery, equipment, or property at any time, or any private vehicle while used in furtherance of the Employer’s business, while using or under the influence of drugs or alcohol. This policy shall not prevent the Employer from considering on a case-by-case basis whether to afford an offending employee an opportunity for treatment and rehabilitation at the employee’s expense.

13.10 Handgun and Firearm Policy:

No employee shall use or possess a handgun or firearm while on duty, while on Employer property, or while in an Employer vehicle. An employee may possess a handgun or firearm in Employer parking facilities and areas, but only to the extent allowed by the Minnesota Citizen’s Personal Protection Act of 2003 and any amendments thereto.

13.11 Access to Premises:

Representatives of the Union may visit the Employer’s premises for the purpose of discussing grievances and other Union matters with the employees during breaks or unpaid time. The Union representative shall inform the Employer upon arrival that he or she is on the premises. Care shall be taken so there will be no disturbance to other employees or clients or consumers, and no such discussions shall take place in areas where clients or consumers may be present.

13.12 Fringe Benefit Grandfathering:

For any employee employed on/or before July 1st, 2007, the eligibility threshold for Holidays (Article 3), Vacations (Article 4.1), Sick Leave (Article 6.3), Health & Welfare (Article 10.1), and Retirement (Article 10.2A), shall be twenty (20) hours, not twenty-four (24) as stated in said Articles. By mutual written agreement between the Employer and such an employee,

the Employer may schedule that employee for up to twenty-four (24) hours per week without making that employee eligible for those fringe benefits.

ARTICLE 14 WORKING ENVIRONMENT

14.1 Safety:

No employee shall be required to work in unsafe conditions. If an employee has concerns about the safety of working conditions, he or she should bring the matter to the attention of the Employer or have a Union representative bring the matter to the attention of the Employer. The Employer shall investigate and, if necessary, fix the problem.

Whenever the Employer's building is open to the public, the Employer shall arrange the work schedule or arrange for volunteers, such that no employee is required to work alone.

14.2 Consumer Conduct and Behavior Policy Committee:

The Consumer Conduct and Behavior Policy Committee shall have at least three (3) members. The bargaining unit shall have two (2) seats on the Committee, one (1) of which shall be filled by the Community Services Staff, and the other of which shall be filled by an employee of the Union's choosing. The Committee shall have the powers and responsibilities set forth in the Consumer Conduct and Behavior Policy. The Employer shall consult with the Committee prior to making any amendments to the Policy.

ARTICLE 15 NON-DISCRIMINATION

The Employer and the Union agree not to discriminate in any manner against any employee because that employee is a member of a class of persons protected by federal, state, or local discrimination laws, or because of political affiliation, political belief, veteran status, or union activity. This prohibition includes, but is not limited to, all phases of employment, placement, transfers, training and development, promotions, demotions, compensation, benefits, work force reductions, termination, discipline, and all other conditions of employment.

ARTICLE 16 NO STRIKE, NO LOCKOUT

During the term of this Agreement, no employee shall engage in any economic, unfair labor practice, or other kind of strike, picketing, sit-down, slowdown, cessation or interruption of work, or boycott. The Union, its officers, agents, representatives, and members, shall not, in any way, directly or indirectly, authorize, ratify, condone, or lend support to any such action. During the term of this Agreement, the Employer shall not lock out the employees.

ARTICLE 17 CONFLICT WITH LAW

It is hereby declared to be the intention of the parties to this Agreement that the sections, paragraphs, sentences, clauses, and phrases of this Agreement are separable, and if any section, paragraph, sentence, clause, or phrase of this Agreement shall be declared invalid by the valid

judgment or decree of a court of competent jurisdiction because of any conflict with any federal or Minnesota state law, such invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Agreement. The Employer and the Union agree that they shall meet within a thirty (30) day period following the declaration of invalidity to begin negotiations upon substitute language to replace the language found to be invalid. This places no time limitations on the parties during which they may negotiate.

ARTICLE 18 MANAGEMENT RIGHTS

Except where expressly abridged by a specific provision of this Agreement, the Employer retains the sole right to manage the business, to direct the working forces, and to carry out the ordinary and customary functions of management whether or not possessed or exercised by the Employer prior to the execution of this Agreement. Nothing adverse to the Employer shall be inferred from the fact that this paragraph does not attempt to list such management functions.

ARTICLE 19 SUPERSEDURE

19.1 Supersedure:

Neither party shall be bound by, and neither party shall be able to invoke, any actual or alleged past practice or precedent occurring prior to the effective date of the Agreement between the parties negotiated in 2004.

19.2 Full Agreement:

The parties agree that they have bargained wholly with respect to all proper subjects of collective bargaining and have settled all such matters as set forth in this Agreement. This Agreement embodies the complete and final understanding reached by the parties as to the wages, hours, and all other terms and conditions of employment.

Nothing contained herein shall prohibit the Employer and the Union during the term of this Agreement from discussing any matter by mutual agreement, provided however, that any such discussions shall in no way obligate the Employer to negotiate such matter, or any other, and shall not restrict or prevent the Employer from proceeding as it deems appropriate.

ARTICLE 20 NOTICES

Any notice required or permitted under this Agreement to be given by one party to the other shall be given in writing and mailed or hand delivered to these addresses:

Employer:	Executive Director Damiano of Duluth, Inc. 206 West Fourth Street Duluth, Minnesota 55806
-----------	--

Union: United Food and Commercial Workers Union
Local 1189, Suite 211
2002 London Road
Duluth, Minnesota 55812

**ARTICLE 21
TERM OF AGREEMENT**

This Agreement shall become effective on **July 1st, 2020**, and shall continue in full force and effect until **June 30th, 2023**, and shall continue in full force and effect from year to year thereafter; provided, however, that upon sixty (60) days' written notice of proposed termination or modification given by one party to the other prior to the end of the original or renewal term, as the case may be, the parties shall enter into collective bargaining for a replacement contract. **For the purpose of bargaining wages and benefits, the contract will re-open July 1, 2021 and July 1, 2022.**

DAMIANO OF DULUTH, INC.
Duluth, Minnesota

**UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 1189**
Duluth, Minnesota

By _____
Jennifer McEwen, Chair,
Board of Directors

By _____
Al Priolo

Date _____

Date _____

EXHIBIT A

At the time of hiring, an applicant's work experience shall be evaluated by the Employer to determine the appropriate credit, if any, for purposes of wages. If credit is given, the applicant's starting wage shall be the same as the wage of an employee with similar experience in the same job classification. If there is no such employee, the applicant's starting wage shall be extrapolated from the wages and years of experience of the employees in the job classification.

New hires given no credit for purposes of wages shall receive the following starting wages:

EFFECTIVE	July 1, 2020
Receptionist/Volunteer Coordinator	\$ 11.10
Cook 1	\$ 16.32
Cook 2	\$ 15.03
Kitchen Worker	\$ 12.24
Clothing Programs Coordinator	\$ 20.06
Community Relations Coordinator	\$ 13.08
Community Services Specialist	\$ 17.94
Kids' Kitchen Coordinator	\$ 20.06
Program Assistant	\$ 11.86
Kids' Kitchen Program Assistant	\$ 15.48
Kids' Kitchen Activities Facilitator	\$ 14.91
Bldg. Maintenance Coordinator	\$ 20.06
Janitor	\$ 12.24
Administrative Specialist	\$ 17.94

**LETTER
of
UNDERSTANDING**

It was agreed during the 2020 negotiations, that the following shall constitute the bargaining unit seniority list as of July 1, 2020:

<u>Name</u>	<u>Date of Hire</u>
Richard Howell	9/5/2012
Johnny Brown	4/24/2013
Donna Verhel	10/25/2016
Robin Tomczak	3/26/2018
Maurice Bolden	10/19/2018
John Williams	6/17/2019
Bobby Dupree	3/3/2020

Dated this _____ day of _____, 2020.

Jennifer McEwen, Chair, Board of Directors
Damiano of Duluth, Inc.

Al Priolo
UFCW Local 1189

**LETTER
of
UNDERSTANDING**

By and Between

United Food and Commercial Workers Union, Local 1189

and

Damiano Of Duluth, Inc.

During the 2017 negotiations it was agreed that the last sentence in Section 10.1, dealing with "Health Care Contribution amounts as determined by the trustees," shall not be interpreted or applied so as to require the Employer to pay more than the monthly contribution rate for single coverage as specified in Section 10.1.

Dated this FIFTH day of September, 2017.


John D. Kelly, Chair, Board of Directors
Damiano of Duluth, Inc.


Al Priolo
UFCW Local 1189