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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
Plaintiff,)
)
v.)
)
SAFeway INC., ACG MERGER SUB, INC.,)
and CARR-GOTTSTEIN FOODS CO.,)
)
Defendants.)

Case No.: 3AN-99- 4371 CIV

CONSENT DECREE

Preamble

Plaintiff State of Alaska filed its Complaint herein and defendants, Carr-Gottstein Foods Co. ("Carrs"), Safeway Inc. ("Safeway"), and ACG Merger Sub. Inc., ("ACG") were duly served with copies of the Summons and Complaint. Defendants, by and through their undersigned attorneys, have consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein. This Consent Decree does not constitute any evidence against or an admission by any party with respect to any issue of law or fact herein.

WHEREAS, Carrs now owns and operates 16 supercenter-type supermarkets and 9 smaller supermarkets;

WHEREAS, Safeway owns and operates 11 traditional supermarkets;

WHEREAS, on August 6, 1998, Safeway entered into an agreement with Carrs, pursuant to which Safeway will acquire Carrs by the merger of Carrs with ACG, a wholly owned subsidiary of Safeway;

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WHEREAS, the State of Alaska ("State"), through its Attorney General, alleges in the complaint filed in this action that the merger of Carrs and Safeway supermarket stores is unlawful under Alaska antitrust law (the allegations in the State's complaint are hereby realleged and incorporated herein);

WHEREAS, the State of Alaska has brought this action against defendants on behalf of the people of Alaska, and in the State's capacity in parens patriae;

WHEREAS, defendants do not admit and continue to deny that such transaction is unlawful;

WHEREAS, the Court has made no determination of any violation of law;

WHEREAS, the State of Alaska and defendants wish to avoid litigation and to resolve the controversy on mutually acceptable terms;

WHEREAS, defendants have agreed to be bound by the provisions of this Consent Decree, and there is no just reason for delay in its entry;

WHEREAS, prompt and certain divestiture of certain assets is an essential element of the agreement among the parties to resolve this matter, and the parties intend that defendants divest these assets as viable supermarkets to ensure the assets will remain competitive, viable and ongoing;

WHEREAS, defendants have represented to plaintiff that they can comply with the obligations set forth in this Consent Decree, including the prompt divestiture of all assets to a qualified buyer, and full relief as provided in this Consent Decree can be accomplished;

WHEREAS, neither the execution or entry of this consent decree nor the terms thereof are intended to or shall alter, modify, supplement or rescind in any way the

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respective rights or obligations of Safeway or Carrs relating to Safeway's acquisition of Carrs;

WHEREAS, Safeway represents that the proposed acquisition of Carrs represents an investment of more than \$330 million and reflects a long-term commitment to doing business in Alaska, including Safeway's representation that it will provide fair opportunities for Alaskan companies to sell their products and services to Safeway, hire Alaskan employees, maintain in-state Alaskan management, and continue Carrs' support for local schools, charities and other community groups; and

WHEREAS, the State of Alaska, through its Attorney General, finds the terms of the instant Consent Degree will remedy any likely anticompetitive harm arising from the merger of defendants, and are in the public's best interest;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to AS 45.50.582 and over each of the parties hereto. Venue is proper in this Judicial District. The Complaint states a claim upon which relief may be granted against the defendants under Alaska antitrust law. The Attorney General of the State of Alaska, Bruce M. Botelho, has authority to bring this action pursuant to AS 45.50.580.

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II.

DEFINITIONS

As used in this Consent Decree:

A. "Divestiture Assets" means the supermarkets identified in Schedule A of this Consent Decree and all of Safeway's interest in the assets, leases, properties, permits (to the extent transferable) businesses and goodwill, tangible and intangible, related to or utilized in Safeway's supermarket businesses operated at those locations, but shall not include any of Safeway's (1) trade marks, trade dress, service marks or trade names, (2) private label inventory, and (3) proprietary software or computer applications, or in the case of Carrs' Fairbanks store (Carrs' Store No. 16) all of Carrs' interest in the assets, leases, properties, permits (to the extent transferable) business and good will, tangible and intangible, related to or utilized in Carrs' supermarket business operated at the Fairbanks location, but shall not include any of Carrs' (1) trade marks, trade dress, service marks or trade names, (2) private label inventory, and (3) proprietary software or computer applications.

B. "Defendants" means Carr-Gottstein Foods Co., a Delaware corporation; Safeway Inc., a Delaware corporation; ACG Merger Sub, Inc., a Delaware corporation; and their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. "Carrs" means the Carrs' supermarkets, Eagle Quality Centers, Oaken Keg Liquor stores, tobacco stores and warehouses and distribution facilities in Alaska and Washington.

D. "Safeway" means the Safeway supermarkets, liquor stores, tobacco stores and other facilities in Alaska.

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E. "Supermarket" means a full-line retail grocery store: (a) that carries a wide variety of food and grocery items in standard consumer sizes in particular product categories, including bakery goods, dairy products, refrigerated and frozen foods and beverages, fresh and prepared meats and poultry, produce, beverages, shelf-stable foods, staple food stuffs (such as, flour, sugar, coffee and tea), and non-food grocery items (such as, soaps, detergents, paper goods and health and beauty aids); and (b) that have over \$2,000,000 in annual sales.

III.

APPLICABILITY

A. The provisions of this Consent Decree apply to defendants, their successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Decree by personal service or otherwise.

B. Nothing herein shall suggest that any portion of this Consent Decree is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to third parties, specifically including, without limitation certain parties and putative class members who and which have brought Meyers et al. v. Safeway Inc. et al., Case No. 3AN-98-10272, an action pending in Alaska Superior Court, in the Third Judicial District, at Anchorage, Alaska. The State of Alaska may not assign or otherwise convey any right to enforce any provision of this Consent Decree.

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IV.

DIVESTITURE OF ASSETS

A. Defendants are hereby ordered and directed to divest, absolutely and in good faith, the Divestiture Assets listed on Schedule A of this Consent Decree, according to the following schedule:

1. Defendants shall present to plaintiff signed purchase agreements, and shall obtain approval of the proposed acquirer(s) and transaction(s) for all Divestiture Assets, within six (6) months after approval of this Consent Decree by the Court.

2. To the extent that defendants have not presented to plaintiff signed purchase agreements and obtained approval for the divestiture of any Divestiture Asset within six (6) months after approval of this Consent Decree by the Court, the monetary incentive provisions of Paragraph IV.G. of this Consent Decree shall apply to each such Divestiture Asset, and plaintiff may apply to the Court, pursuant to Paragraph VII of this Consent Decree, for the appointment of a trustee to assume all further responsibility for divesting any such Divestiture Asset.

3. With regard to those Divestiture Assets for which defendants have timely presented plaintiff with signed purchase agreements and have received approval of the acquirer(s) and transactions(s) from plaintiff in accordance with this provision of the Consent Decree, defendants shall have an additional two months, for a total of eight (8) months from the date of approval of this Consent Decree by the Court, to close such transactions and divest such Divestiture Assets. During this additional two month

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3 period, the monetary incentive provisions of Paragraph IV.G. of this Consent Decree
4 shall not apply to any such Divestiture Asset.

5 4. If, notwithstanding the exercise of their good faith best efforts,
6 defendants are unable to close the transactions and divest the Divestiture Assets referred
7 to in the immediately preceding subparagraph within eight (8) months after approval of
8 this Consent Decree by the Court, defendants may apply to the Alaska Attorney General
9 for relief from the imposition of the monetary incentive provisions contained in
10 Paragraph IV.G. of this Consent Decree, and the Alaska Attorney General may extend
11 the time period in which the closings of such transactions and divestitures of such
12 Divestiture Assets must occur for another two (2) months or longer period, as the Alaska
13 Attorney General deems appropriate. The decision to grant any such additional
14 extension of time rests within the sound discretion of the Alaska Attorney General and
15 his decision upon such request shall be final. **provided that** the Alaska Attorney
16 General shall, in rendering such decision, exercise his discretion in a reasonable manner.

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18 5. If, at the conclusion of the maximum divestiture periods authorized
19 by this provision of the Consent Decree, there remain any Divestiture Assets referred to
20 in subparagraphs 3 and 4 of this provision that are not yet divested, the monetary
21 incentives contained in paragraph IV.G. of this Consent Decree shall apply to each such
22 undivested Divestiture Asset(s).

23 B. Defendants shall divest the Divestiture Assets only after plaintiff has given
24 prior approval to the proposed acquirer(s) and to the proposed transaction itself or until
25 plaintiffs' time to object expires.
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C. The purpose of these divestitures is to ensure the continued use of the Divestiture Assets as supermarkets and to remedy the lessening of competition and the proposed act(s) or practice(s) of unfair competition resulting from the transaction as alleged in the plaintiff's Complaint.

D. In order to obtain the approval by plaintiff of a proposed acquirer, defendants shall establish to the reasonable satisfaction of the plaintiff that such proposed acquirer or purchaser and purchase agreement meet the conditions set forth on Schedule B, attached hereto.

E. The six (6) month period of time within which defendants must obtain approval of signed purchase agreement(s) and proposed acquirer(s) and transaction(s), under paragraph IV.A.1. of this Consent Decree, and the trustee may divest Divestiture Assets under paragraph IV.G.2. of this Consent Decree, is tolled for the period of time the State requires to review a proposed acquirer and transaction, if the State approves the acquirer and the transaction. If the State does not approve the proposed acquirer(s) and transaction(s), the six (6) month period of time is not tolled.

F. In accomplishing the divestiture ordered by this Consent Decree, defendants shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall, upon request, provide a copy of the Consent Decree to any person making inquiry regarding a possible purchase. Defendants shall also offer to furnish to any bona fide prospective purchaser, subject to customary confidentiality assurances, all customary and reasonably necessary information regarding the Divestiture Assets, except such information as is subject to attorney/client privilege or attorney work product immunity or other legally recognized privilege.

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Defendants shall make such information available to the plaintiff, as set forth in Paragraph IV.H. Defendants shall permit bona fide prospective purchasers of the Divestiture Assets to have access to corporate personnel and the district manager responsible for the individual store and to make such inspection of physical facilities and financial, operational or other documents and information that may be relevant to the divestitures required by this Consent Decree, and is of a kind that is customarily provided in the sale of supermarkets. Financial documents and information shall be limited to average weekly sales for the last year, and operating expenses, such as rents, utilities, property taxes and assessments and common area expenses for maintenance, security and similar items.

G. Defendants shall take all reasonable steps to accomplish in an expeditious manner the divestitures contemplated by this Consent Decree. In order to assure that defendants take such steps as promptly as practicable and that such divestitures are accomplished as contemplated by this Consent Decree, the following monetary incentives shall, subject to the provisions in Paragraph IV.A. of this Consent Decree, apply as indicated herein:

1. If, at the end of six (6) months after approval of this Consent Decree by the Court, defendants have not presented to plaintiff signed purchase agreements and obtained approval of the proposed acquirer(s) and transaction(s) for any Divestiture Assets, listed on Schedule A of this Consent Decree, defendant Safeway shall pay to plaintiff \$571,428.57, for each such Divestiture Asset, up to a maximum of four (4) million dollars (\$4,000,000.00).

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3 2. For each Divestiture Asset listed on Schedule A of this
4 Consent Decree for which defendants have not been presented plaintiff with a
5 signed purchase agreement and obtained approval of the proposed acquirer and
6 transaction within six (6) months after approval of this Consent Decree by the
7 Court, plaintiff may seek the appointment of a trustee, pursuant to Section VII of
8 this Consent Decree, and such trustee, after appointment, shall immediately
9 commence to use his or her best efforts to divest such Divestiture Assets.

10 3. If, after six (6) months of the appointment of the trustee, any of the
11 transactions referenced in the immediately preceding subparagraphs have not been
12 closed and the related Divestiture Assets have not been divested,, defendant Safeway
13 shall pay to plaintiff an additional \$428,571.42 for each such Divestiture Asset not
14 divested, up to a maximum of three (3) million dollars (\$3,000,000.00); **provided,**
15 **however,** that if the trustee is unable to sell Safeway's Wasilla supermarket (Safeway
16 Store No. 559) within one (1) year of the appointment of the trustee, plaintiff shall pay
17 back to defendant Safeway \$500,000.00.

18 4. If defendants have been unable to close transactions and divest
19 Divestiture Assets during the maximum period of time allowed under paragraphs
20 IV.A.3. and 4., for closing the transaction(s) and the divestiture(s) of Divestiture Assets
21 for which defendants have timely presented plaintiff with signed purchase agreements
22 and have received plaintiff's approval of the proposed acquirer(s) and transaction(s) in
23 accordance with the provisions of this Consent Decree, defendant Safeway shall pay to
24 plaintiff \$571,428.57 for each such Divestiture Asset not divested, up to a maximum of
25 four (4) million dollars.
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5. Notwithstanding the foregoing subparagraphs of this provision, no monetary incentives shall be imposed upon defendant Safeway for any delay in the closing of a transaction or the divestiture of a Divestiture Asset listed on Schedule A of this Consent Decree occasioned by the time required for potential acquirer(s) to obtain requisite state governmental approvals, such as the approval of the Alaska ABC Board of liquor license transfers for liquor stores associated with the Divestiture Assets, **provided that** once the proposed acquirer(s) and transactions(s) have been approved by plaintiff, such acquirer(s) will promptly apply to the Alaska ABC Board for approval of such liquor license transfer(s).

H. Beginning on the date the Consent Decree is approved by the Court, and every thirty (30) days thereafter until all divestitures have been completed or a trustee is appointed, defendants shall deliver to plaintiff a comprehensive written report as to the fact and manner of compliance with Paragraph IV of the Consent Decree. Each such report shall identify each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Divestiture Assets, including the address and telephone number of that person and a summary of the contacts with that person during that period. Defendants shall maintain full records of all efforts made to divest all or any portion of the Divestiture Assets. Within fifteen (15) days of receipt of a request from the State, Safeway shall provide to the State copies of any non-privileged documents requested by the State relating to the divestiture, including written communications to and from parties listed in the monthly report, internal memoranda, and reports and recommendations concerning divestiture.

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3 Plaintiff may contact any person it is aware of who may be interested in acquiring any of
4 the Divestiture Assets, without interfering with Safeway's sale negotiations.

5 I. Defendant Safeway agrees, on a market-by-market basis for those markets
6 referenced in Schedule D (namely, Anchorage, Eagle River, Wasilla, and Fairbanks),
7 that its gross profit margins (as defined herein) for the Safeway and Carrs supermarkets
8 operating in such markets for the period between the closing of the merger and the
9 divestiture of the Divestiture Assets shall not exceed an increase of one hundred basis
10 points over the average, quarterly gross profit margins (as defined herein) of Carrs and
11 Safeway supermarkets for the same quarter of the year 1998 ("gross profit margin limit"
12 or "limit").¹ "Gross profit margin" means retail sales minus costs of goods sold divided
13 by sales, and shall be determined on a market by market averaged basis for the
14 Safeway's and Carr's supermarkets in the markets referenced in Schedule D. Defendant
15 Safeway's obligation not to exceed the foregoing limit on gross profit margins (as
16 defined herein) shall operate on a market-by-market basis, and shall terminate for any
17 given market at such time as all of the Divestiture Assets which are to be divested in that
18 particular market have been sold. During the period of time in which the foregoing limit
19 on gross profit margins (as defined herein) remains in effect, defendant Safeway shall
20 initially provide to plaintiff, or its auditor (whose reasonable fees and expenses will be
21 paid by defendant Safeway) information regarding the average, quarterly gross profit
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24 ¹ In the last quarter of 1998, Safeway introduced a new discount pricing system with the
25 introduction of its new "Club Card" program. During the first three quarters of 1998,
26 however, Safeway used a different discount pricing system. In order to establish an
accurate and uniform baseline for Safeway's gross profit margins in 1998, Safeway's
gross profit margins for the first three quarters of 1998 have been recalculated to reflect
discounts in pricing in the same manner that was used in the Club Card discount pricing
system in the fourth quarter of 1998 and the first quarter of 1999.

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margins (as defined herein) for the year 1998, and shall further provide to plaintiff and/or its auditor on a monthly basis, reports reflecting current gross profit margin (as defined herein) for the Divestiture Assets and markets which remain subject to the foregoing limit on gross margins. Plaintiff or its auditor may, on a quarterly basis, pursuant to reasonable notice to defendant Safeway and during reasonable business hours, review defendant Safeway's financial, pricing, cost and other relevant records in order to verify the accuracy of the foregoing monthly reports provided to plaintiff; **provided, however,** that such initial information and monthly reports as well as defendant Safeway's financial, pricing, cost or other relevant records so reviewed by plaintiff or its auditor shall be subject to a confidentiality requirement by which plaintiff and its auditor shall not disclose such reports, records or information to persons other than officials or agents of plaintiff who are involved in plaintiff's review of the merger, including but not limited to members of the public, press, media or business competitors of defendant Safeway, without first obtaining Safeway's express written consent to do so; and **provided further** that the foregoing initial information and monthly reports and defendant Safeway's financial, pricing, cost or other relevant records so reviewed may not be used for any purpose other than implementing or enforcing this Consent Decree. If defendant Safeway's gross profit margins (as defined herein), for the period in which the Divestiture Assets are being divested exceed such limit, defendant shall pay to plaintiff the amount of net revenue realized by such violation of such limit. In the event there is a dispute between the parties regarding whether defendant Safeway's gross profit margins (as defined herein) have exceeded the foregoing limit on gross profit margins (as defined herein), or the amount of net revenue realized as a result of such

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violation of the limit, either party may seek prompt judicial review and resolution of such dispute pursuant to Section XII of this Consent Decree.

J. Defendant Safeway further agrees to pay for the reasonable professional fees and expenses of the consultant which plaintiff intends to retain to assist plaintiff in reviewing and evaluating the proposed acquirer(s) of the Divestiture Assets listed on Schedule A attached hereto, and the proposed transaction(s) with respect to the acquisition(s) of such Divestiture Assets, consistent with Section IV.B. and Schedule B of this Consent Decree.

V.

MAINTENANCE OF ASSETS

A. For each Divestiture Asset listed in Schedule A of the Consent Decree, defendants shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of each such Divestiture Asset to prevent the destruction, removal, wasting, deterioration, or impairment of each such Divestiture Asset, except for ordinary wear and tear, until that Divestiture Asset is divested. Defendants shall take no action that would jeopardize the divestiture of such supermarkets.

B. Defendants shall comply with all the terms of the Asset Maintenance Agreement attached to this Consent Decree and made a part hereof as Schedule C. The Asset Maintenance Agreement shall continue in effect until such time as each supermarket listed in Schedule A is divested as required by this Consent Decree.

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VI.

PRIOR NOTICE

For a period of five (5) years from the date this Consent Decree is entered, defendants, either individually or jointly, shall not: (1) acquire any of the Divestiture Assets without the prior approval of plaintiff; and (2) acquire and operate as a supermarket, another store in the geographic markets listed in Schedule D attached hereto, without first providing thirty (30) days' advance written notice to plaintiff. If within the thirty (30) days after receiving such notice, plaintiff makes a written request for additional information or documentation, defendants shall not consummate the transaction until twenty (20) days after submitting such additional information or documentation. Notice under this Paragraph VI shall not be required if defendants acquire (through purchase, lease or otherwise), develop and/or operate for supermarket or other use any undeveloped property or existing buildings which have not been used as a supermarket for the immediately preceding twelve (12) months.

VII.

APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested all of the Divestiture Assets within the time period provided in Section IV.A. and that time has not been extended by plaintiff in writing, plaintiff shall have the right to apply to the Court to appoint a trustee who shall be responsible for effecting the divestiture of the remaining Divestiture Assets. The trustee shall be selected by the plaintiff, subject to the consent of the defendants which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If defendants have not

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opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by plaintiff or the Court of the identity of the proposed trustee, defendants shall be deemed to have consented to the selection of the proposed trustee.

B. Within ten (10) days after appointment of the trustee, defendants shall execute a trust agreement that, subject to the prior approval of plaintiff and the Court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the remaining divestitures required by this Consent Decree.

C. The trustee shall have twelve (12) months from the date the trust agreement is approved to accomplish the divestiture, which shall be subject to the prior approval of plaintiff. Plaintiff may apply to the Court to extend the time period for the trustee to accomplish any remaining divestitures for an additional twelve (12) month period (for a total maximum period of two (2) years), if, at the end of the first twelve-month period, the trustee has submitted a plan of divestiture or believes the divestiture can be accomplished within such extended period of time.

D. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the remaining Divestiture Assets. Unless plaintiff otherwise consents in writing, the divestiture shall be made to an acquirer for whom it is demonstrated to the sole satisfaction of the plaintiff: (1) that the acquirer has the managerial, operational and financial capability to compete effectively as a viable, ongoing supermarket operator; (2) that the purchase is for the purpose of competing effectively in the supermarket industry; and (3) that the acquisition of the divested assets will not adversely affect competition in the supermarket industry.

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E. The trustee shall have the power and authority to hire, at the cost and expense of defendants, any investment bankers, attorneys, or other agents or assistants reasonably necessary in the judgment of the trustee to carry out the trustee's duties and responsibilities. The trustee shall have the power and authority to accomplish the remaining divestiture at the earliest possible time to an acquirer acceptable to the plaintiff and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than (1) the trustee's malfeasance, (2) gross negligence, (3) breach of fiduciary duty, or (4) that the sale is contrary to the express terms of this Consent Decree. Any such objections by defendants must be conveyed in writing to the plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Paragraph VIII.

F. The trustee shall serve at the cost and expense of defendants on such reasonable and customary terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the Divestiture Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee, and that of any professionals and agents retained by the trustee, shall be reasonable in light of the value of the divestiture assets and based on a fee arrangement providing the trustee with an incentive tied to the price and terms of the divestiture.

G. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee, and any consultants, accountants,

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3 attorneys, and other persons retained by the trustee, shall have, to the extent relevant to
4 the remaining Divestiture Assets, full and complete access to the personnel, books,
5 records, and facilities of defendants, and defendants shall develop such financial or other
6 information relevant to such assets as the trustee may reasonably request, subject to
7 reasonable protection for privileged communications, trade secrets, or other confidential
8 research, development, or commercial information. Defendants shall take no action to
9 interfere with or to impede the trustee's accomplishment of the divestiture.

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11 H. The trustee shall use his or her best efforts to negotiate the most favorable
12 price and terms for the remaining assets to be divested, subject to defendants' absolute
13 and unconditional obligation to make the divestitures required by this Consent Decree at
14 no minimum price. The divestiture shall be made in the manner and to the purchaser as
15 set out in Paragraph IV of this Consent Decree.

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17 I. Defendants shall indemnify the trustee and hold the trustee harmless
18 against any losses, claims, damages, liabilities, or expenses arising out of, or in
19 connection with, the performance of the trustee's duties, including all reasonable fees of
20 counsel and other expenses incurred in connection with the preparation for, or defense
21 of any claim, whether or not resulting in any liability, except to the extent that such
22 liabilities, losses, damages, claims, or expenses result from misfeasance, gross
23 negligence, willful or wanton acts, breach of fiduciary duty, or bad faith by the trustee.

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25 J. After his or her appointment, the trustee shall file reports every sixty (60)
26 days with the parties and the Court setting forth the trustee's accounts and efforts to
accomplish the divestiture ordered under this Consent Decree.

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3 K. The appointment of a trustee, or failure to appoint a trustee, is not an
4 exclusive remedy and shall not preclude the plaintiff from seeking civil penalties or any
5 other relief available to it, for defendants' failure to comply with this Consent Decree.

6 VIII.

7 NOTIFICATION OF PROPOSED DIVESTITURE

8 Within five (5) business days following execution of a letter of intent or a
9 definitive agreement for the proposed disposition of any one or more of the Divestiture
10 Assets, defendants or the trustee, whichever is then responsible for effecting the
11 divestiture required herein, shall notify the plaintiff of any proposed divestiture required
12 by Paragraph IV or VII of this Consent Decree. If the trustee is responsible, he or she
13 shall likewise notify defendants. The notice shall set forth the material details of the
14 proposed transaction and list the name, address, and telephone number of each person
15 not previously identified who offered or expressed an interest in or desire to acquire,
16 entered into negotiations to acquire or made an inquiry about acquiring any ownership
17 interest in all or any portion of the Divestiture Assets for which notice is being provided,
18 together with a summary of the contacts with each such person. Within fifteen (15) days
19 after receipt of the notice, the plaintiff may request additional information concerning
20 the proposed divestiture, the proposed purchaser, and any other potential purchaser.
21 Defendants or the trustee shall furnish the additional information within fifteen (15)
22 days of the receipt of the request. Within thirty (30) days after receipt of the notice or
23 within fifteen (15) days after receipt of the additional information, whichever is later,
24 plaintiff shall notify in writing defendants and the trustee, if there is one, if it objects to
25 the proposed divestiture, specifying the basis for its objection. If plaintiff fails to object
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within the period specified, or if plaintiff notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph VII.E. Upon objection by the plaintiff, or upon objection by defendants under Paragraph VII.E., the proposed divestiture shall not be accomplished unless approved by the Court.

IX.

COMPLIANCE INSPECTION

A. For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, from time to time:

1. Duly authorized representatives of plaintiff, including consultants and other persons, shall, upon the written request of the plaintiff, and on reasonable notice to defendants made to its principal offices, be permitted:

a. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to this Consent Decree; and

b. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

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2. Upon the written request of the plaintiff, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, with the matters contained in this Consent Decree as may be requested.

3. No information nor any documents obtained by the means provided in Paragraph IV or Paragraph VII shall be divulged by any representative of the plaintiff to any person other than a duly authorized representative of the Alaska Attorney General, except in the course of legal proceedings to which the plaintiff is a party, or for the purpose of enforcing compliance with this Consent Decree, or as otherwise required by law.

4. If, at the time information or documents are furnished by defendants to the plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c) of the Alaska Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Confidential" or "Subject to claim of protection under Rule 26(c) of the Alaska Rules of Civil Procedure," then plaintiff shall give ten (10) days' notice to the marking defendant prior to divulging such material in any legal proceeding, except in proceedings to enforce compliance with this Consent Decree, in which case the documents shall be filed under seal.

X.

RESTRICTIONS ON SALE OF ASSETS

For a period of five (5) years commencing on the date the Consent Decree becomes final, Safeway shall neither enter into nor enforce any agreement that restricts

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the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 1, 1998, in Anchorage, Eagle River, Wasilla, or Fairbanks, Alaska to operate a supermarket at that site if such supermarket was formerly owned or operated by Safeway.

XI.

NOTICES

Any notices required by this Consent Decree shall be delivered to the parties at the following addresses:

A. For Defendant Carr-Gottstein Foods Co.:

Michael J. Moxness, General Counsel
6411 A Street
Anchorage, Alaska 99518

B. For Defendant Safeway Inc.:

Michael C. Ross, Senior Vice President & General Counsel
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229

C. For Plaintiff State of Alaska:

Bruce M. Botelho
Alaska Attorney General
Box 110300
Juneau, Alaska 99811-0300

XII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders and

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directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII.

OTHER RELIEF

A. If defendants fail to comply with the terms of this Consent Decree, the Court may order appropriate relief pursuant to AS 45.50.580, for violations of this Consent Decree, on motion of plaintiff for cause.

B. Plaintiff is awarded its attorneys' fees and costs in the amount of \$52,474. Defendants shall pay this sum to plaintiff within thirty (30) days of entry of this Consent Decree. In addition, defendants shall make supplemental payments for reasonable attorney's fees and costs incurred by plaintiff related to implementation of and compliance with this Consent Decree between February 1, 1999, and divestiture of the last of the Divestiture Assets. Such payment(s) shall be made with thirty (30) days of plaintiff submitting a bill.

XIV.

VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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XV.

PUBLIC COMMENT

This Consent Decree is being submitted by the parties to the Court for approval pursuant to AS 45.50.584. In accordance with this procedure, the Consent Decree does not become final until sixty (60) days after its filing. During this sixty (60) day period, any interested persons may file verified exceptions to the form or substance of the Consent Decree, and after a full hearing on such exceptions, the Court may approve or refuse to enter the Consent Decree. Copies of all such verified exceptions shall be served on the parties to the Consent Decree for their review, and each party may respond to such exceptions at the hearing as each party deems appropriate. Defendants agree to publish, at defendants' expense, notice, the form and contents of which are subject to plaintiffs' reasonable approval, of the execution and terms of the Consent Decree, the place or places at which members of the public may obtain copies of the Consent Decree and/or any summaries thereof or comments thereon prepared by the parties, and the procedure for submitting verified exceptions thereto. Such notice shall be published in the Anchorage Daily News, Fairbanks Daily News-Miner and the Juneau Empire on two occasions, the first being within ten (10) days after the lodging of this Consent Decree with the Court, and the second between ten (10) and twenty (20) days after the lodging of this Consent Decree with the Court.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
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ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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XVI.

CONSUMMATION OF MERGER

The Agreement and Plan of Merger dated August 6, 1998, between Defendants in this matter, may not be consummated prior to entry of an order by the Court approving this Consent Decree.

XVII.

TERMINATION OF PROVISIONS

This Consent Decree will expire on the fifth anniversary of the date of its entry.

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PHONE: (907) 269-5100

XVIII.

PUBLIC INTEREST

The terms of this Consent Decree are fair and reasonable and the entry thereof is in the public's interest.

BRUCE M. BOTELHO
ATTORNEY GENERAL

Dated: February 9, 1999

By: Daveed A. Schwartz
Julia A. Coster
Alaska Bar #8703006,
Daveed A. Schwartz
Alaska Bar #9411123
Assistant Attorneys General

BANKSTON & McCOLLUM

Dated: FEB. 9, 1999

By: William M. Bankston
William M. Bankston
Alaska Bar #7111024
Attorneys for Carr-Gottstein Foods Co.

BOGLE & GATES P.L.L.C.

Dated: February 9, 1999

By: Douglas J. Sordahely
Douglas J. Sordahely
Alaska Bar #7210072
Attorneys for Safeway Inc. and
ACG Merger Sub, Inc.

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[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: 4/13/99



Alaska Superior Court Judge
SANDERS

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 268-5100

SCHEDULE A

**LIST OF SUPERMARKETS TO BE DIVESTED
(REFERENCED IN SECTIONS II.A OF THE CONSENT DECREE)**

1. Carrs' supermarket in Fairbanks:
(Carrs Store No. 16);
2. Safeway's supermarket in Eagle River:
(Safeway Store No. 3549);
3. Safeway's supermarket in Wasilla:
(Safeway Store No. 559);
4. Four Safeway supermarkets in Anchorage:
 - a. Dimond Blvd. supermarket
(Safeway Store No. 409);
 - b. University Center supermarket
(Safeway Store No. 3406);
 - c. Boniface supermarket
(Safeway Store No. 408); and
 - d. Spenard/Northern Lights supermarket
(Safeway Store No. 404).

SCHEDULE B

PURCHASER AND PURCHASE AGREEMENT APPROVAL CRITERIA

State approval of any proposed acquisition or lease of Divestiture Assets is required for a period of three years commencing from the date on which the Consent Decree becomes final. To obtain approval of the State a proposed acquirer of the divestiture assets and a proposed purchase agreement must meet the following conditions:

- 1) The proposed acquirer must have the managerial, operational and financial capability and experience to compete effectively as a viable, ongoing retailer in the supermarket industry;
- 2) The purchase must be for the purpose of competing effectively in the supermarket industry;
- 3) The acquisition may not adversely affect competition in the supermarket industry or in any affected geographic market;
- 4) The proposed purchase agreement must contain written agreements that the acquirer:
 - a) intends to use the divested assets as a supermarket for a minimum of three years; and
 - b) agrees not to sell or lease the divested assets to a purchaser or lessee who has not been previously approved by the State.

In considering whether to approve a proposed acquirer and purchase agreement the State will consider whether the proposed purchaser and other potential purchasers are offering to purchase two or more stores.

SCHEDULE C

ASSET MAINTENANCE AGREEMENT

1. Safeway Inc. shall maintain the viability, marketability, and competitiveness of the divestiture Assets ("Assets") listed on Schedule A to the Consent Decree, and shall not cause the wasting or deterioration of the Assets, nor shall it cause the Assets to be operated in a manner inconsistent with applicable laws, nor shall it sell, transfer, encumber or otherwise impair the marketability, viability, or competitiveness of the Assets. Safeway Inc. shall conduct or cause to be conducted the business of the Supermarkets in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use its best efforts to preserve the existing relationships with each Supermarket's suppliers, customers, employees and others having business relations with the Supermarkets, in the ordinary course of the Supermarkets' business and in accordance with past practice. Safeway Inc. shall not terminate the operation of any Supermarket. Safeway Inc. shall continue to maintain the inventory of each Supermarket at levels and selections (e.g., stock-keeping units) consistent with those maintained by Safeway Inc., at such Supermarket in the ordinary course of business consistent with past practice. Safeway Inc. shall use best efforts to keep the organization and properties of each of the Supermarkets intact, including current business operations, physical facilities, working conditions, and (subject to adjustments which occur relating to fluctuation of business caused by market forces) a work force of equivalent size, training, and expertise associated with each Supermarket. Included in the above obligations, Safeway Inc. shall, without limitation:

a. maintain operations and departments and not reduce hours at each Supermarket beyond the adjustments which occur relating to the fluctuation of business caused by market forces;

b. not transfer inventory from any Supermarket other than in the ordinary course of business consistent with past practice; provided that upon divestiture of any Safeway Supermarket, Safeway may transfer its private label inventory (and any other inventory that purchaser does not want to purchase) to another Safeway Supermarket.

c. make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations, in each case in a manner consistent with past practice;

d. maintain each Supermarket's books and records;

e. not display any signs or conduct any advertising (including direct mailing, point-of-purchase coupons, etc.) that indicates that Safeway Inc. is moving its operations to another location, or that indicates a Supermarket will close;

f. not conduct any "going out of business," "close-out," "liquidation" or similar sales or promotions at or relating to any Supermarket; and

g. not change or modify in any material respect the existing advertising practices, programs and policies for any Supermarket, other than changes in the ordinary course of business consistent with past practice for supermarkets of Safeway Inc. not being closed or relocated.

2. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with five (5) days' notice to Safeway Inc. and to their principal office(s), Safeway Inc. shall permit any duly authorized representative or representatives of the plaintiff:

a. access during the office hours of Safeway Inc., in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Safeway Inc. relating to compliance with this Agreement; and

b. to interview officers or employees of Safeway Inc., who may have counsel present regarding any such matters.

3. Upon divestiture of the Supermarkets listed in Schedule A attached to the Consent Decree, the obligations of Safeway Inc. under this Agreement shall terminate.

Signed this ___ day of _____, 1999.

SAFEWAY INC., a corporation

By: _____

SCHEDULE D

**LIST OF GEOGRAPHIC MARKETS
(REFERENCED IN SECTION V OF THE CONSENT DECREE)**

1. Fairbanks
2. Wasilla
3. Eagle River
4. Anchorage