

4102

FILED NO. _____

BOOK 45 PAGE 42

98 APR 22 PM 3:47

MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

REC \$ 20⁰⁰
AUD \$ _____
R.M.F. \$ 1⁰⁰

COMPUTER
RECORDED
UNCOMPARED

Prepared By: , , , ,

RECORDATION REQUESTED BY:

F & M BANK
P O BOX 877
35 1ST AVENUE NE
WATERTOWN, SD 57201-0877

RELEASED 1-2-01 SEE
RECORD 2001 PAGE 8

✓ RETURN TO:
U.S. CORPORATE SERVICES
P.O. BOX 65607
ST. PAUL, MN 55165-0607
(612) 227-7575

SEND TAX NOTICES TO:

F & M BANK
P O BOX 877
35 1ST AVENUE NE
WATERTOWN, SD 57201-0877

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

LANDLORD'S CONSENT

THIS LANDLORD'S CONSENT is entered into among CINDOR, INC ("Borrower"), whose address is 312-9TH AVE. S.E., WATERTOWN, SD 57201-4853; F & M BANK ("Lender"), whose address is P O BOX 877, 35 1ST AVENUE NE, WATERTOWN, SD 57201-0877; and ADVANCED GROCERY SYSTEMS, INC. ("Landlord"), whose address is 14243 HAMILTON STREET, OMAHA, NE 68102. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

DEFINITIONS. The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Agreement. The word "Agreement" means this Landlord's Consent, as this Landlord's Consent may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Consent from time to time.

Borrower. The word "Borrower" means CINDOR, INC.

Collateral. The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles and Fixtures, including but not limited to LEASEHOLD IMPROVEMENTS.

Landlord. The word "Landlord" means ADVANCED GROCERY SYSTEMS, INC.. The term "Landlord" is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

Lease. The word "Lease" means that certain lease of the Premises, dated March 3, 1998, between Landlord and Borrower.

Lender. The word "Lender" means F & M BANK, its successors and assigns.

Loan. The word "Loan" means the loan, or any other financial accommodations, Lender has made or is making to Borrower.

Premises. The word "Premises" means the real property located in MADISON County, State of Iowa, commonly known as 224 HIGHWAY 92, WINTERSET, IA 50273, and legally described as:

SEE EXHIBIT "B".

BORROWER'S ASSIGNMENT OF LEASE. Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

CONSENT OF LANDLORD. Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as

LANDLORD'S CONSENT
(Continued)

lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord.

LEASE DEFAULTS. Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord.

DISCLAIMER OF INTEREST. Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement.

ENTRY ONTO PREMISES. Landlord and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

COLLATERAL. IN ADDITION TO THE COLLATERAL DESCRIBED EARLIER IN THIS AGREEMENT, THE WORD "COLLATERAL" WILL BE THE SECURITY AGREEMENT FROM CINDOR, INC. TO LENDER DATED MARCH 3, 1998.

MISCELLANEOUS PROVISIONS. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan; including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not constitute a waiver of or prejudice Lender's right otherwise to demand strict compliance with that provision or any other provision. Whenever consent by Lender is required in this Agreement, the granting of such consent by Lender in any one instance shall not constitute continuing consent to subsequent instances where such consent is required.

ACKNOWLEDGMENT OF RECEIPT OF COPIES. Borrower hereby acknowledges the receipt of a copy of this Agreement.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S CONSENT, AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED MARCH 3, 1998.

BORROWER:

CINDOR, INC

By: Donald L. Stowe Pres.
DONALD L. STOWE, PRESIDENT

By: W. Douglas Cable
W. DOUGLAS CABLE, VICE PRESIDENT

LANDLORD:

ADVANCED GROCERY SYSTEMS, INC.

x Joe M. Anderson
Landlord's Signature

LENDER:

F & M BANK

By: [Signature]
Authorized Officer

LENDER ACKNOWLEDGMENT

STATE OF South Dakota)
) ss
COUNTY OF Codington)

On this 3rd day of March, A.D., 19 98, before me, the undersigned Notary Public in and for said County and State, personally appeared Ferry Chebung and known to me to be the authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By Ferry Chebung
Notary Public in and for the State of SD

Residing at Watertown
My commission expires 10/31/98

03-03-1998

LANDLORD'S CONSENT
(Continued)

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CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this 3rd day of March, 1998, before me, the undersigned Notary Public, personally appeared DONALD L. STOWE, PRESIDENT; and W. DOUGLAS CABLE, VICE PRESIDENT of CINDOR, INC, and known to me to be authorized agents of the corporation that executed the Landlord's Consent and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By [Signature] 10-31-98 Residing at [Address]

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this 3rd day of March, A.D., 1998, before me a Notary Public in and for said County and State, personally appeared _____, to me personally known, who, being by me duly sworn did say that authorized signer of **ADVANCED GROCERY SYSTEMS, INC** said corporation, that no seal has been procured by said corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of directors and that said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Given under my hand and official seal this _____ day of _____, 19__.

By _____ Residing at _____.

Notary Public in and for the State of _____ My commission expires _____

Exhibit "B"

A parcel of land in the Northwest Fractional Quarter (1) of the Northwest Quarter (1) of Section Thirty-one (31), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P. M., City of Winterset, Madison County, Iowa, described as Commencing at the Southwest Corner of said Northwest Fractional Quarter (1) of the Northwest Quarter (1) thence South 89°11'29" East 1387.11 feet along the south line of said Northwest Fractional Quarter (1) of the Northwest Quarter (1) to the Southwest Corner of the East 5.52 acres of said Northwest Fractional Quarter (1) of the Northwest Quarter (1), thence North 00°42'29" West 357.00 feet along the West line of said East 5.52 acres to Point of Beginning, thence continuing North 00°04'29" West 895.80 feet to the South Right-of-way line of Iowa Highway No. 92, thence North 89°05'32" West 582.59 feet along said South Right-of-way line, thence Southwesterly 55.80 feet along a 904.90 feet radius curve concave Southeasterly having a 55.79 feet chord bearing South 78°33'06" West, thence South 00°11'37" East 992.01 feet, thence South 89°11'54" East 185.60 feet, thence North 00°10'23" East 256.62 feet, thence South 89°09'56" East 346.78 feet, thence South 00°07'32" West 149.47 feet, thence South 89°10'55" East 102.25 feet to Point of Beginning containing 12.3520 Acres.