

This Instrument prepared by
and after recording should be
returned to:

Michael A. Nemeroff, Esq.
Vedder, Price, Kaulman & Kammholz
222 N. LaSalle Street
Suite 2500
Chicago, IL 60601

1 of 2
1401
1041
772278
SI CR
82222

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement (hereinafter referred to as "Mortgage") entered into this 30th day of March, 1998, by Heritage Trust Company, as Trustee under Trust Agreement dated August 26, 1991 and known as Trust No. 91-4404, whose address is 17500 South Oak Park Avenue, Tinley Park, Illinois 60477 ("Mortgagor") and Advanced Pulver Systems, Inc., an Illinois corporation, whose address is 9909 Virginia Avenue, Chicago Ridge, Illinois 60415-1300 ("Borrower"), in favor of The CIT Group/Credit Finance, Inc., a Delaware corporation, having a principal office at 10 South LaSalle Street, Chicago, Illinois 60603 ("Mortgagee").

37

WITNESSETH:

THIS MORTGAGE SECURES FUTURE OBLIGATIONS AND ADVANCES
PURSUANT TO 205 ILCS 5/5d.

ARTICLE I

DEFINITIONS

1.1 As used herein, the following terms shall have the following meanings:

(a) Affiliate: As to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse and children) of such individual and any trust whose principal grantee is such individual or one or more members of such immediate family and any Person who is controlled by any such member of trust. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interest, by contract or otherwise).

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Debtor Relief Laws: The term Debtor Relief Laws shall mean any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(c) Event of Default: Any happening or occurrence described in Article VI herein.

(d) Escrowed Sum: The amounts paid by Mortgagor to Mortgagee pursuant to Section 10.14 hereof to be held by Mortgagee in a fund for the payment of Impositions and insurance premiums.

(e) Financial Statements: The balance sheets, profit and loss statements, reconciliations of capital and surplus, changes in cash flow, schedules of sources and applications of funds, and other financial information furnished by Borrower in accordance with the provisions of the Loan Agreement.

(f) Fixtures: All materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed on or in the Land or the Improvements, or which in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the State of Illinois, other than those owned by tenants under any lease. The term "Fixture" shall include, without limitation, all items of Personalty to the extent that the same may be deemed fixtures under applicable law.

(g) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(h) Governmental Requirements: The term Governmental Requirements shall mean all statutes, laws, ordinances, orders, writs, injunctions, decrees, rules and regulations of any Governmental Authority applicable to Borrower, Mortgagor, the Mortgaged Property or the Improvements.

(i) Impositions: All real estate and personal property taxes; water, gas, sewer, electricity and other utility rates and charges; charges imposed pursuant to any subdivision, planned unit development or condominium declaration or restrictions; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof by entities with the legal right or authority to so assess, levy or impose.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(j) Improvements: Any and all buildings, structures, open parking areas and other improvements, and any and all accessions, additions, replacements, substitutions or alterations thereof or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(k) Indebtedness: The principal of, including future advances of said principal amount, interest on and all other amounts and payments due under or secured by the Security Documents, together with all funds hereafter advanced by Mortgagee to or for the benefit of Borrower or Mortgagor, which shall to the extent permitted by law, shall be on parity with and not subordinate to the original indebtedness (including, without limiting the generality of the foregoing, advances to protect the security of and costs of enforcement under this Mortgage or the Security Documents), and all other indebtedness of whatever kind or character, direct or indirect, absolute or contingent, owing or which may hereafter become owing by Borrower to Mortgagee, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Borrower and Mortgagor may hereafter become indebted to Mortgagee in further sum or sums. The initial principal Indebtedness loaned to Borrower pursuant to the Loan Agreement and secured by this Mortgage is \$2,000,000. Pursuant to the Loan Agreement, interest on the Indebtedness accrues pursuant to a variable interest rate. The total principal amount of Indebtedness secured by this Mortgage, excluding accrued interest (whether or not added to principal) and costs, fees and charges and advances by Mortgagee for other purposes authorized by this Mortgage shall not exceed Ten Million and 00/100 Dollars (\$10,000,000.00). Those portions of the Indebtedness secured hereby which are evidenced by the revolving loan under the Loan Agreement constitute "revolving credit" as defined 815 ILCS 205/4.1. All future advances made from the date hereof will have the same priority as the original loans evidenced by the Loan Agreement, secured by, among other things, the Mortgage. All future advances must be made within twenty (20) years from the date hereof.

(l) Land: The real estate or any interest therein described on Exhibit "A" attached hereto and made a part hereof, together with all Improvements and fixtures and all rights, titles and interests appurtenant thereto.

(m) Leases: All of the right, title and interest of Mortgagor in and to any and all Real Estate Leases and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant Mortgagor an interest in the Personalty.

(n) Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, Mortgagor, or the Mortgaged Property, including but not limited to those respecting the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) Borrower's presently or subsequently effective by-laws and articles of incorporation, or any instruments

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

establishing any partnership, limited partnership, joint venture, trust or other form of business association (if either, both or all by any of same), (iii) any and all Leases and other contracts (written or oral) of any nature to which Mortgagor may be bound and (iv) any and all restrictions, reservations, conditions, easements or other covenants or agreements of record affecting the Mortgaged Property.

(o) Loan Agreement: That certain Loan and Security Agreement of even date herewith by and among Borrower and Mortgagee relating to, among other things, Mortgagor's obligations with respect to additional funds advanced under the Security Documents, as same may be amended, modified, supplemented or restated from time to time.

(p) Mortgagee: The CIT Group/Credit Finance, Inc.

(q) Mortgaged Property: The Land, Improvements, Fixtures, Personality, Leases and Rents, together with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appurtenances and appurtenances in any way appertaining thereto, and all right, title and interest, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part therein or thereof;

(ii) all betterments, accessions, additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(iii) all other interest of every kind and character which Mortgagor now has or at anytime hereafter acquires in and to the above-described real and personal property and all property which is used in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Mortgagor with respect to such property. In the event the estate of Mortgagor in and to any of the Land and Improvements is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Mortgagor in or to the property demised under the lease creating such leasehold estate and including Mortgagor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Mortgagor, such fee simple interest shall be encumbered by this Mortgage in the same manner as if Mortgagor had fee simple title to such property as of the date of execution hereof; and

(iv) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

As used in this Mortgage, the term "Mortgaged Property" is expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(r) Mortgagor: The above defined Mortgagor and any and all subsequent record or equitable owners of the Mortgaged Property.

(s) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower or Mortgagor to Mortgagee, or others as set forth in the Security Documents, and/or any other documents or instruments executed in connection with the Indebtedness.

(t) Permitted Encumbrances: The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any) as set forth on Exhibit "B" attached hereto and made a part hereof, if any, existing financing statements, if any, not required to be released by Mortgagee of even date herewith and to the extent permitted pursuant to Section 5.4 of this Mortgage, (i) the rights of the lessors under any Leases other than Real Estate Leases wherein Mortgagor is the lessee, (ii) purchase money security interests in Personalty, and (iii) any financing statements evidencing the foregoing.

(u) Person: An individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

(v) Personalty: All of the right, title and interest of Borrower or Mortgagor in and to all tangible and intangible personal property which is now or becomes attached to, installed on or placed on or used on or in connection with or which is acquired for such attachment, installation, placement or use, or which arises out of the development, improvement, financing, leasing, sale, operation or use of the Land, Improvements, Fixtures or other goods located on the Land or Improvements, and with respect to all of the foregoing, whether now owned or at any time hereafter acquired, including, but not limited to:

(i) all furnishings, building materials, supplies, machines, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, furniture, cabinets, shades, blinds, screens; plumbing, heating, air conditioning, lighting, lifting, ventilating, refrigerating, cooking, medical, laundry and incinerating equipment; partitions, drapes, carpets, rugs and other floor coverings, awnings; call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, swimming pools, compressors, vacuum cleaning systems; disposals, dishwashers, ranges, ovens, kitchen equipment, cafeteria equipment and recreational equipment;

(ii) all equipment, inventory, attachments, partitions, goods, instruments, appliances, furnishings, machinery, tools, raw materials, component parts, work in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

progress and materials, and all other tangible personal property of whatsoever kind, used or consumed in the improvement, use or enjoyment of the Land, the Improvements or the Fixtures, now or any time hereafter owned or acquired by Borrower or Mortgagor, wherever located and all products thereof whether in possession of Borrower or Mortgagor or whether located on the Land or elsewhere;

(iii) all general intangibles relating to the design, development, operation, management and use of the Land, the Improvements and the Fixtures, including, but not limited to: (w) all names under which or by which the Land, the Improvements and the Fixtures, may at any time be owned and operated under, any such names or any variant thereof, and all goodwill in any way relating to the Land, the Improvements and the Fixtures; (x) all permits, licenses, authorizations, variances, trademarks, service marks, trade names, symbols, land use entitlements, approvals, consents, clearances, and rights obtained from governmental agencies issued or obtained in connection with the Land, the Improvements and the Fixtures; and (y) to the extent allowed or permitted, all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the use, occupation or operation of the Land, the Improvements and the Fixtures; and

(iv) all evidence of ownership of any part of the Land, the Improvements, and the Fixtures that is owned by Borrower or Mortgagor in common with others, including all water stock relating to the Land, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land;

(v) all accounts, deposit accounts, security deposits, accounts receivable, instruments, documents, chattel paper, bank deposits, books and records, documents of title, general intangibles, rights to payment of every kind, all of Borrower and Mortgagor's rights, direct or indirect, under or pursuant to any and all construction, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts, subcontracts, insurance policies and the proceeds therefrom, licenses and bonds now or anytime hereafter arising from construction on the Land or the use or enjoyment of the Land and the Improvements including, without limitation, maintenance agreements, service contracts and all contracts and agreements for the operation, management and leasing of the Land and/or the Improvements;

(vi) all water, water stock, water capacity or other water rights, licenses, permits, warranties, irrigation rights, oil and gas rights, minerals, crops and timber, and wastewater and storm drainage discharge capacity attributable or allowable to all or any portion of the Land, the Improvements and any other property, both real and personal, hereinabove described;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(vii) all rights, titles and interests in and to all of the plans, specifications, drawings, surveys, maps and plats, including, but not limited to, plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering studies and analyses heretofore or hereafter prepared by any architect or engineer in respect to the Land, Improvements or Fixtures;

(viii) all of Mortgagor's right, title and interest in and to any award, remuneration, settlement or compensation heretofore made or hereafter to be made by any Governmental Authority to Mortgagor, including those for any vacation of, change of grade in, any streets affecting the Land or the Improvements;

(ix) all of Borrower and Mortgagor's right, title and interest in and to all proceeds arising from or by virtue of the sale, lease or other disposal of all or any part of the Mortgaged Property (consent to same not granted or to be implied hereby); and, all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Mortgaged Property; and

(x) all additions, accessions, accessories, amendments, modifications, extensions, renewals and enlargements, and additions to, substitutions for the products thereof, and all proceeds, whether cash proceeds or noncash proceeds, and including insurance and condemnation proceeds, received when any of the foregoing property described in (i) through (ix) above (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily or when earlier received; such proceeds shall include any of the foregoing specifically described property of Borrower or Mortgagor acquired with cash proceeds, together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper and General Intangibles located on or related to the Land, as those terms are defined in the Illinois Uniform Commercial Code.

(v) Real Estate Leases: All of the lessor's right, title and interest in and to any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to extract, mine, reside in, sell or use the Land, Improvements or Fixtures.

(x) Rents: All of the rents, revenues, income, proceeds, royalties, profits and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting or otherwise enjoying or using the Mortgaged Property.

(y) Security Documents: The Loan Agreement, this Mortgage, the Assignment of Rents and Leases among Mortgagor and Mortgagee, the Environmental Indemnity Agreement between Borrower and Mortgagee, the Trademark and Patent Security

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Agreement between Borrower and Mortgagee, the Guaranty of Pulver Genau, Inc. between Pulver Genau, Inc. and Mortgagee, and the Limited Guaranty of Richard Pulver between Richard Pulver and Mortgagee, each of even date herewith, and any and all other documents now or hereafter executed by Borrower, Mortgagor, or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations, as same may be amended, modified or restated from time to time.

(2) Senior Lender: LaSalle National Bank, a national banking association and holder of the senior security interest in the Mortgaged Property.

ARTICLE II

GRANT

2.1 Borrower is justly indebted to Mortgagee and has agreed to pay said debt, with interest thereon, according to the terms of the Loan Agreement, which, by reference, is made a part hereof.

2.2 The beneficial owner of Mortgagor is an officer, director and shareholder of Borrower, and, accordingly, will directly benefit from the Indebtedness advanced to Borrower pursuant to the Loan Agreement.

2.3 The beneficial owner of Mortgagor and Mortgagor acknowledge the receipt of good and valuable consideration for this Mortgage and affirm that they will be benefitted by the Indebtedness advanced to Borrower pursuant to the Loan Agreement.

2.4 In consideration of the premises and the Indebtedness advanced hereinabove defined, Mortgagor has mortgaged, pledged, granted, bargained, sold and conveyed, and by these presents does mortgage, pledge, grant, bargain, sell and convey unto Mortgagee the Land.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Borrower and Mortgagor hereby unconditionally warrant and represent to Mortgagee as of the date hereof as follows:

3.1 Validity of Documents: The execution, delivery and performance by Borrower and Mortgagor of the Security Documents to which each is a party and the borrowing evidenced by the Loan Agreement are (a) within Borrower and Mortgagor's powers and have been duly authorized by Borrower and all other requisite corporate action; (b) have received all (if any) requisite prior

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

governmental approval in order to be legally binding and enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon Borrower or Mortgagor's property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents constitute legal, valid and binding obligations of Borrower and Mortgagor, as applicable, in accordance with their respective terms, and Mortgagor has full and lawful authority to bargain, grant, sell, mortgage, assign, transfer and convey all of the Mortgaged Property as set forth herein.

3.2 Information: All information, reports, papers and data given to Mortgagee with respect to Borrower or the Mortgaged Property (excluding any projections or forecasts) are accurate, complete and correct in all material respects as of the date hereof and to the best knowledge of Borrower, do not omit any fact the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

3.3 Title to Mortgaged Property and Lien of this Instrument: Mortgagor has good and indefeasible title in fee simple to the Land described on Exhibit "A" attached hereto, and good and indefeasible title to the Improvements, the Fixtures and Personalty, Leases and Rents, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances, subject to the prior lien of the Senior Lender in and to the Mortgaged Property. This Mortgage constitutes a valid, subsisting Mortgage on the Land, the Improvements, the Fixtures and a valid, subsisting security interest in and to the Personalty, all in accordance with the terms hereof, subject only to the prior lien of the Senior Lender.

3.4 Taxes and Other Payments: Mortgagor has filed all federal, state, county, municipal and city income and other tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Mortgagor, and Mortgagor does not know of any basis for any additional assessment in respect of any such taxes. Mortgagor has paid or will pay in full in a commercially reasonable time and manner all sums owing or claimed for labor, material, supplies, personal property (whether or not constituting a Fixture hereunder) and services of every kind and character used, furnished or installed in the Mortgaged Property which Mortgagor is obligated to pay.

3.5 Litigation: There are no actions, suits or proceedings pending or, to the knowledge of Borrower or Mortgagor, threatened against or affecting the Mortgaged Property or involving the validity or enforceability of this Mortgage or the priority of the lien and security interest hereof, and no event has occurred (including specifically Mortgagor's execution of the Security Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property other than the lien and security interest created by the Security Documents.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3.6 Utilities: All utility services in such capacities as are necessary for the Mortgaged Property and the operation thereof for their intended purpose are available to the Mortgaged Property and the operation thereof for their intended purpose, including water supply, storm and sanitary sewer facilities, gas, electric and telephone facilities.

3.7 Streets and Parking: All parking areas, streets, roads, and/or highways necessary for the full utilization of the Improvements for their intended purposes have been completed or the necessary rights-of-way therefor have either been acquired by the appropriate Governmental Authority or have been dedicated to the public use and accepted by such Governmental Authority.

3.8 Permits: All zoning, utility, building, health and operating permits (if any) required for the operation of the Improvements have been obtained and copies of same shall be delivered to Mortgagee.

ARTICLE IV

AFFIRMATIVE COVENANTS

Borrower and Mortgagor hereby unconditionally covenant and agree with Mortgagee as follows:

4.1 Payment and Performance: Borrower will pay the Indebtedness as and when called for in the Security Documents and will perform all of the Obligations in full and on or before the dates they are to be performed.

4.2 Existence: Borrower will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 Compliance with Legal Requirements: Borrower and Mortgagor will promptly and faithfully give ability to contest, comply with, conform to and obey all present and future Legal Requirements whether or not same shall necessitate structural changes in improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 Payment of Impositions: Subject to the provisions of Section 10.14 herein, Mortgagor will pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier of the date same becomes delinquent, or the day any fine, penalty, interest or cost may be added thereto or imposed or the day any lien may be filed for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Mortgagor may, if permitted by law and pursuant to an agreement with the taxing entity, pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions. Mortgagor may in good faith, in lieu of paying such Impositions as they become due and payable, by appropriate proceedings, contest the validity thereof. During such contest Mortgagor shall not be deemed in default hereunder because of such nonpayment if, in the case of a contest involving an amount in excess of \$100,000, prior to delinquency of the asserted tax or assessment, Mortgagor

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

furnishes Mortgagee an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash or security acceptable to Mortgagee or with surety acceptable to Mortgagee, in the amount of the tax or assessment being contested by Mortgagor and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith. Upon conclusion of such contest Mortgagor shall promptly pay any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

4.5 Repair: Mortgagor will keep or cause the Mortgaged Property to be kept in good order and condition consistent with its existing condition, reasonable wear and tear excepted, and presenting a good appearance and will make or cause tenants of the Mortgaged Property to make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition, reasonable wear and tear excepted. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Section 5.2 hereinbelow; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will promptly notify Mortgagee in writing of the commencement of such emergency measures and, when same are completed, the completion date and the measures actually taken.

4.6 Insurance: Mortgagor shall obtain and maintain insurance upon and relating to the Mortgaged Property providing the following described insurance coverage:

(a) Casualty. Fire and casualty insurance insuring against personal injury and death, loss by fire and such other hazards, casualties and contingencies (including but not limited to fire, lightning, hail, windstorm, explosion, malicious mischief, vandalism and rent loss or business interruption insurance covering loss of Rents) as are covered by extended coverage policies in effect where the Land is located and such other risks as may be specified by Mortgagee from time to time, all in such amounts and with such insurers of recognized responsibility as are acceptable to Mortgagee; provided, however, that absent written direction from Mortgagee, such insurance shall be in an amount not less than the full insurable replacement value of the Mortgaged Property with no co-insurance liability.

(b) Flood. If, and to the extent that the Mortgaged Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Secretary of Housing and Urban Development or by such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, Mortgagor shall carry flood insurance with respect to the Mortgaged Property in amounts

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

not less than the maximum limit of coverage then available with respect to the Mortgaged Property pursuant to any and all national and state flood insurance programs with respect to the Mortgaged Property or the amount of the Indebtedness, whichever is less.

(c) Boiler and Machinery. Boiler and machinery insurance covering loss or damage to all portions of the Mortgaged Property comprised of air conditioning and heating systems, other pressure vessels, machinery, boilers or high pressure piping in an amount and containing terms acceptable to Mortgagee.

(d) Liability Insurance. Commercial general liability, automobile liability, worker's compensation, employer liability and broad form umbrella or excess liability insurance policies against claims for bodily injury, death or property damage in an amount and containing terms acceptable to Mortgagee.

Each insurance policy issued in connection with the Mortgaged Property shall provide, by way of endorsements, riders or otherwise, that proceeds will be payable to Mortgagee as its interest may appear subject to the Senior Lender's prior rights thereto. All renewal and substitute policies of insurance or certified copies thereof shall be delivered at the office of Mortgagee, premiums paid, at least thirty (30) days before termination of policies theretofore delivered to Mortgagee. If proof of renewal or re-issuance of any insurance policy required hereunder has not been received by Mortgagee at least thirty (30) days prior to the expiration of an existing policy, and Mortgagee gives at least ten (10) days written notice to Mortgagor or, if such policy will expire within said ten (10) day period, then such lesser notice prior to the expiration of the policy as Mortgagee may reasonably give, Mortgagee shall have the right, but not the obligation, to make premium payments, at Mortgagor's expense, to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same. All such payments by Mortgagee shall be part of the Indebtedness secured hereby and payable on demand.

4.7 Restoration Following Casualty: If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor will give notice thereof to Mortgagee. In case of any loss including, without limitation, any loss that requires restoration, repair or replacement (hereinafter referred to as the "Work") of the Mortgaged Property, all insurance proceeds shall be paid first, in accordance with the mortgage recorded by the Senior Lender against the Mortgaged Property, as amended from time to time (collectively the "Senior Mortgage") to satisfy the obligations secured thereby or to restore, repair or replace the Mortgaged Property, and the balance of the insurance proceeds, if any, directly to the Mortgagee. Mortgagee shall immediately remit to Senior Lender any proceeds received by Mortgagee in violation of this paragraph. In the event Mortgagee elects to make such insurance proceeds available to Mortgagor for purposes of completing the Work, Mortgagor will promptly and at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction. In the event insurance proceeds are not made available to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor to restore, repair, replace or rebuild the Mortgaged Property as aforesaid, Mortgagor shall not be obligated to perform such work but shall clean up any damaged areas in a commercially reasonable manner at Mortgagor's sole cost and expense.

If the proceeds of the insurance described in Section 4.6 hereinabove are to be used for the prosecution of the Work, such proceeds shall be paid out by Mortgagee from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to such restoration, repair or replacement or directly to such persons) as the Work progresses, subject to the following conditions if the cost of the Work exceeds \$25,000.00: (a) an architect or engineer, approved by Mortgagee, shall be retained by Mortgagor (at Mortgagor's expense) and charged with the supervision of the Work and Mortgagor shall have prepared, submitted to Mortgagee and secured Mortgagee's written approval of the plans and specifications for such Work which shall not be unreasonably withheld or delayed; (b) each request for payment by Mortgagor shall be made on ten (10) days prior written notice to Mortgagee and shall be accompanied by a certificate executed by the architect or engineer supervising the Work stating, among such other matters as may be reasonably required by Mortgagee that: (i) all of the Work completed has been done in compliance with the approved plans and specifications; (ii) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (iii) when added to all sums previously paid out by Mortgagor, the sum requested does not exceed the value of the Work done to the date of such certificate; and (iv) the amount of insurance proceeds remaining in the hands of Mortgagee plus any funds deposited with Mortgagee or demonstrated to be available for such purpose in accordance with subparagraph (f) below, will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as the Mortgagee may require an estimate of the cost of such completion); (c) each request shall be accompanied by waivers of lien satisfactory in form and substance to Mortgagee covering that part of the Work completed prior to that part of the Work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Mortgagee that there has not been filed with respect to the Mortgaged Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Mortgaged Property; (d) there has not occurred any Event of Default (as herein defined) since the hazard, casualty or contingency giving rise to payment of the insurance proceeds occurred; (e) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful; and (f) if, in Mortgagee's reasonable judgment, the amount of such insurance proceeds will not be sufficient to complete the Work (which determination may be made prior to or during the performance of the Work), Mortgagor shall deposit with Mortgagee, immediately upon a request therefor, or, demonstrate to Mortgagee's reasonable satisfaction that Mortgagor has funds available for such purpose in Mortgagor's possession (in which event such funds will be the first funds expended to pay for the Work) an amount of money which when added to such insurance proceeds will be sufficient, in Mortgagee's reasonable judgment, to complete the Work. If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or one or more of the other

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

aforesaid persons) incident thereto, Mortgagee shall, at its option, either disburse such balance to Mortgagor or apply such amount to the Indebtedness. Nothing herein shall be interpreted to prohibit Mortgagee from (y) withholding from each such disbursement ten percent (10%) (or such greater amount, if permitted or required by any Legal Requirement) of the amount otherwise herein provided to be disbursed, and then continuing to withhold such sum until the time permitted for perfecting liens against the Mortgaged Property has expired, at which time the amount withheld shall be disbursed to Mortgagor (or to Mortgagor and/or any person or persons furnishing labor and/or material for the Work or directly to such persons), or (z) applying at any time the whole or any part of such insurance proceeds to the Indebtedness or to the curing of any Event of Default.

4.8 Leases and Rents: Except in the ordinary course of Borrower's business (which shall generally include current market conditions at such location when such events occur), Mortgagor shall (a) with respect to any proposed Real Estate Lease, not execute any Real Estate Lease without the prior written consent of Mortgagee (and which Real Estate Lease shall be only for the occupancy by the tenant thereunder); (b) not discount any rent payable under any Real Estate Lease or modify or vary, surrender or terminate, either orally or in writing, any Real Estate Lease resulting in terms less favorable to Mortgagor than those existing as of the date hereof; (c) not cancel any Real Estate Lease affecting the Mortgaged Property or any part thereof without the prior written consent of Mortgagee; (d) not voluntarily terminate, cancel, waive, modify or amend its rights or the obligations of any party under any of the Real Estate Leases or (e) use all reasonable efforts to maintain each of the Real Estate Leases in full force and effect during the full term hereof. With respect to the Real Estate Leases, Mortgagor shall (i) not collect any rent payable for a period of more than one (1) month in advance (except that Mortgagor may collect the first month's rent at one time prior to the lease commencement date); (ii) not further assign its interest in, to or under any Real Estate Lease or the rents payable under any Real Estate Lease and from the Mortgaged Property to any person or entity; (iii) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Real Estate Leases; and (iv) appear and/or defend any action or proceeding involving Mortgagor arising under or in any manner connected with any of the Real Estate Leases. Mortgagor has executed and delivered to Mortgagee an Assignment of Leases and Rents of even date herewith granting Mortgagee certain rights with respect to the Mortgaged Property including, without limiting the generality of the foregoing, the right to collect Rents directly from the tenants under the Real Estate Leases, subject at all times the Senior Lender's prior right to collect such Rents.

4.9 Inspection: Mortgagor will permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Property during normal business hours, provided such inspection does not unreasonably interfere with the conduct of business by tenants occupying the Mortgaged Property. Mortgagee will notify Mortgagor in writing prior to any inspection.

4.10 Defense of Interest: If the interest of Mortgagee in the Mortgaged Property hereby conveyed, or any part thereof, shall be endangered or shall be attached, directly or indirectly, and in the event the title insurance company issuing Mortgagee a loan policy is either not defending against such claim or, in Mortgagee's reasonable opinion, not adequately defending against such claim, Mortgagor shall, at Mortgagor's expense, take all necessary and proper steps for the defense

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

of such interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such interest in the Mortgaged Property. Mortgagor will indemnify and hold Mortgagee harmless from and against any and all loss, cost, damage, liability or expense (including all court costs and attorneys' fees) incurred by Mortgagee in protecting its interests hereunder in such an event. In the event Mortgagee, in Mortgagee's sole discretion, is not satisfied with Mortgagor's actions in such regard, Mortgagor hereby authorizes Mortgagee, at Mortgagor's expense, to take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such interest in the Mortgaged Property. All such payments by Mortgagee shall be part of the Indebtedness secured hereby and be payable on demand.

4.11 Future Impositions: At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage or upon any rights, titles, liens or security interests created hereby, upon Mortgagee's written request, Mortgagor shall immediately pay all such taxes; provided that, in the alternative, upon Mortgagee's written request, Mortgagor may, in the event of the enactment of such a law, and must if it is unlawful for Mortgagor to pay such taxes, prepay the Indebtedness in full within six (60) days after demand therefor by Mortgagee. No prepayment fee will be due with respect to any prepayment required by Mortgagee pursuant to this section.

4.12 Estoppel Certificates. Borrower shall, upon request, promptly furnish, at any time and from time to time a written statement or affidavit, in such form as may be reasonably required by Mortgagee, stating the amount of the unpaid balance of the Indebtedness, but not more frequently than once per calendar year.

4.13 Financial Statements and Reports: Borrower will maintain full and accurate books of account and other records reflecting the results of its operations and will furnish or cause to be furnished to Mortgagee those Financial Statements required pursuant to the Loan Agreement.

ARTICLE V

NEGATIVE COVENANTS

Borrower and Mortgagor hereby covenant and agree with Mortgagee that, until the entire Indebtedness shall have been paid in full and all of the Obligations which are then subject to performance and discharge shall have been fully performed and discharged:

5.1 Use Violations: Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in any manner which (a) violates any Legal Requirement, including, without limitation, Legal Requirements with respect to the disposal of medical waste products, (b) may be dangerous unless safeguarded as required by law, or (c) constitutes a public or private nuisance.

5.2 Alterations: Mortgagor (i) will not commit or permit any waste (as such term is defined at common law) of the Mortgaged Property and (ii) will not (subject to the provisions of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Sections 4.5 and 4.7 herein), without the prior written consent of Mortgagee, make or permit to be made any alterations or additions to the Mortgaged Property which materially and adversely affect the structural portions of any Improvements, the exterior side or common areas of any Improvements, or any areas visible from the exterior or common areas of the Improvements.

5.3 Replacement of Fixtures: Mortgagor will not, without the prior written consent of Mortgagee, permit any of the fixtures to be removed at any time from the Land or Improvements (i) except in the ordinary course of Mortgagor's business in a manner that does not materially adversely affect Mortgagor's business operations or (ii) unless the removed item is obsolete, removed temporarily for maintenance and repair.

5.4 No Further Encumbrances: Mortgagor will not, without the prior written consent of Mortgagee, create, place, suffer or permit to be created or placed or, through any act or failure to act, acquiesce in the placing of or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens of the Security Documents, with respect to the Mortgaged Property, other than the Permitted Encumbrances, including, without limitation, the Senior Mortgage in favor of the Senior Lender, or such encumbrances as Mortgagee may agree to in writing. The foregoing shall not limit the right of tenants under Real Estate Leases to install removable fixtures subject to security interests on the Mortgaged Property which can be removed without damage to the Mortgaged Property and which pursuant to the Real Estate Leases and the written consent of Mortgagor obtained prior to installation shall remain the property of such tenants and shall not be considered part of the Mortgaged Property.

5.5 Zoning; Title Matters: Mortgagor will not, without Mortgagee's express prior written consent, (A) initiate or support any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable thereto; (B) modify, amend or supplement any Permitted Encumbrances; (C) impose any restrictive covenants or any other encumbrance upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality; or (D) permit or offer the Mortgaged Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement by prescription.

ARTICLE VI

EVENTS OF DEFAULT

6.1 Default: Any one or more of the following events shall constitute an "Event of Default" hereunder and under the Security Documents:

(a) A failure to pay when and as the same shall become due and payable, whether by maturity or otherwise, any interest, principal or other amounts required to be paid hereunder or on the Security Documents;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Default in the due observance or performance of any of the terms, covenants or conditions contained in this Mortgage or the Loan Agreement or any of the Security Documents (except for a default described in subparagraph (a) above) which default continues for a period of thirty (30) days after Mortgagee delivers written notice of such default to Borrower;

(c) Any representation or warranty made by Borrower or Mortgagor to Mortgagee in any of the Security Documents to which either is a party or any certificate or document furnished to Mortgagee in connection with the loan evidenced by the Loan Agreement or in furtherance of the requirements of this Mortgage or of any other Security Document shall be incorrect in any material respect at the time when made or at the time when reaffirmed or deemed reaffirmed by the terms of any Security Document;

(d) Subject to Mortgagor's rights to contest, as set forth in Section 4.4 hereof, a failure by Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Mortgaged Property or any part thereof or become payable during the term of the Indebtedness, which default continues for a period of thirty (30) days after Mortgagee delivers written notice thereof to Mortgagor;

(e) Mortgagor sells, leases (other than leases approved in writing by Mortgagee), exchanges, assigns, conveys or otherwise disposes of the Land, Improvements, or Real Estate Leases or any interest therein, or enters into a written agreement to do so, or grants or permits to exist any other mortgage, Mortgage of trust or other lien, charge or encumbrance against the Land, Improvements, or Real Estate Leases, whether superior or inferior to this Mortgage;

(f) Except as permitted in accordance with Section 5.3 or Section 5.4 above, Mortgagor sells, leases, exchanges, assigns, conveys or otherwise disposes of any portion of the Mortgaged Property, other than the Land, Improvements or Real Estate Leases or any interest thereon covered by Section 6.1(e) hereof, or enters into a written agreement to do so, or grants or permits to exist any other lien, charge or encumbrance against such property, whether superior or inferior to the liens and security interests in this Mortgage, and such default continues for a period of thirty (30) days after written notice thereof to Mortgagor;

(g) Borrower or Mortgagor shall be in Default under the Loan Agreement or any of the Security Documents to which each is a party;

(h) A receiver, liquidator or trustee of Borrower, Mortgagor, or of the Mortgaged Property or of any substantial portion of the properties of any of them, shall be appointed and shall not be removed within thirty (30) days;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) A petition in bankruptcy or for reorganization or for protection under any Debtor Relief Laws shall have been filed against Borrower or Mortgagor and the same is not withdrawn, dismissed, canceled or terminated within sixty (60) days;

(j) Borrower or Mortgagor makes an assignment for the benefit of creditors or files or consents to the filing of a petition in bankruptcy or for protection under any Debtor Relief Laws or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Code or any other federal or state law, now or hereafter in effect, relating to the reorganization of Borrower or Mortgagor or the arrangement or rearrangement or readjustment of the debts of Borrower or Mortgagor or having the effect of enjoining or staying the exercise of rights or remedies by creditors, it being understood that the filing against any such entity of such a petition by a partner of such entity, shall be deemed to be a filing with the consent of such entity;

(k) There is an attachment or sequestration of or relating to a portion of the Mortgaged Property and the same is not promptly discharged within thirty (30) days;

(l) Borrower ceases to do business on the Land for any reason whatsoever without prior written consent of Mortgagee;

(m) A material default occurs under any other agreement that Borrower has with Mortgagee, and such default continues for a period of thirty (30) days after Mortgagee delivers written notice of such default to Borrower;

(n) Any suit is filed against Borrower or Mortgagor which, if adversely determined, could substantially impair the ability of Borrower or Mortgagor to perform each and every one of its obligations under and by virtue of the Security Documents, and Borrower or Mortgagor fails to answer such suit and diligently prosecute the defense of such suit;

(o) Mortgagor shall default or breach any Governmental Requirements pertaining to the Mortgaged Property;

(p) Mortgagor shall be in default under the terms of any document evidencing or securing payment of a debt secured by any lien or security interest on the Mortgaged Property or Improvements (without implying Mortgagee's consent to the existence, placing, creating or permitting of any lien or security interest);

(q) The dissolution or reorganization of Borrower or Mortgagor without the prior written consent of Mortgagee; and

(r) Any substantial damage to or destruction of the Improvements shall occur and insurance proceeds (together with other funds available for such purpose, including funds of Borrower) shall not, in the reasonable opinion of Mortgagee, be sufficient to restore or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

repair the Improvements and pay all extra cost to be incurred such as additional interest, or if insurance proceeds shall not be paid within one hundred twenty (120) days after the date of such casualty, or if Mortgagor shall fail to promptly commence repair or restoration of the Improvements and/or thereafter not diligently complete such repair and restoration within a reasonable time any of which continue for a period of thirty (30) days after written notice of such default from Mortgagee to Mortgagor.

As used in this Section 6.1, the term control as used with respect to any person or entity shall mean the possession of the power to direct the management and policies of such entity.

ARTICLE VII

DEFAULT AND FORECLOSURE

7.1 Remedies: If an Event of Default shall occur and shall continue, Mortgagee, at Mortgagee's election, may exercise any or all of the following rights, remedies and recourses:

(a) enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor, employ a managing agent of the Land and let the same, either in its own name, or in the name of Mortgagor, and receive the rents, income, issues and profits of the Land and apply the same after payment of all necessary charges and expenses, on account of the Indebtedness, and Mortgagor will transfer and assign to Mortgagee, in form satisfactory to Mortgagee, Mortgagor's lessor interest in any lease now or hereafter affecting the whole or any part of the premises;

(b) pay any sums in any form or manner deemed expedient by Mortgagee to protect the security of this instrument or to cure any event of default other than payment of interest or principal on Indebtedness (specifically including the payment of taxes, assessments and insurance premiums on the Land, the costs of maintaining, repairing, and preserving the Land, and the costs of completing any improvements on the Land); make any payments hereby authorized to be made according to any bill, statement, or estimate furnished or procured from the appropriate public officer or the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of Mortgagee shall be conclusive evidence of the validity and amount of items so paid, in which event the amounts so paid, with interest thereon from the date of such payment at the Default Rate (as defined in the Loan Agreement), shall be added to and become a part of the Indebtedness and be immediately due and payable to Mortgagee; and Mortgagee shall be subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security to this Mortgage;

(c) declare the entire Indebtedness immediately due, payable and collectible, without notice to Borrower or Mortgagor, regardless of maturity, and in that event, the entire

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Indebtedness shall become immediately due, payable and collectible; and thereupon Mortgagee may foreclose the lien hereto and sell and dispose of the Land at public auction, at the usual place for conducting sales at the courthouse in the county where the Land or any part thereof may be, to the highest bidder for cash, first advertising the time, terms and place of such by publishing a notice thereof once a week for four consecutive weeks in a newspaper in which sheriff's advertisements are published in said county, all other notice being hereby waived by Mortgagor; and Mortgagee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Land in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale, herein granted, depends, and said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and Mortgage were in all things duly complied with; and Mortgagee, its agents, representatives, successors or assigns, may bid and purchase at such sale; and Mortgagor hereby constitutes and appoints Mortgagee, or its assigns, or agents as attorney in fact to make such recitals, sale and conveyance, and all of the acts of such attorney in fact are hereby ratified, and Mortgagor agrees that such recitals shall be binding and conclusive upon Mortgagor and that the conveyance to be made by Mortgagee, or its assigns (and in the event of a Mortgage in lieu of foreclosure, then as to such conveyance) shall be effectual to bar all right, title and interest, equity of redemption, including all statutory redemption, homestead, dower, courtesy and all other exceptions of Mortgagor, or its successors in interest, in and to said Land; and

Mortgagee, or its assigns, shall collect the proceeds of such sale, reserving therefrom all unpaid indebtedness with interest then due thereon, and all amounts together with all costs and charges for advertising and commissions for selling the Land, including reasonable attorneys' fees, and pay over any surplus to Mortgagor (in the event of deficiency Mortgagor shall immediately on demand from Mortgagee pay over to Mortgagee, or its nominee, such deficiency); and Mortgagor agrees that possession of the Land during the existence of the indebtedness by Mortgagor, or any person claiming under Mortgagor, shall be that of tenant under Mortgagee, or its assigns, and, in case of a sale, as herein provided, Mortgagor or any person in possession under Mortgagor shall then become and be tenants holding over, shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over; the power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all other remedies which Mortgagor may have at law or in equity.

Mortgagee, in any action to foreclose this Mortgage, or upon any event of default, shall be at liberty to apply for the appointment of a receiver of the rents and profits or of the Land or both without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Land as security for the amounts due the Mortgagee, or the solvency of any person or corporation liable for the payment of such amounts.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

In case of any sale under this Mortgage by virtue of the exercise of the power herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Land or any part thereof may be sold in one parcel and as entirety, or in such parcels, manner or order as Mortgagee in its sole discretion may elect and one or more exercises of the powers herein granted shall not extinguish or exhaust the power unless the entire Land is sold or the Secured Indebtedness paid in full.

Mortgagee shall not exercise any of the rights granted in this Section 7.1 (other than the rights set forth in Section 7.1(b) and Mortgagee's right to declare the entire Indebtedness immediately due, payable and collectible), until the first to occur of (i) one hundred eighty (180) days after Mortgagee delivers to Senior Lender notice of a declared Event of Default and Mortgagee's intent to exercise its rights and remedies under this Mortgage, or (ii) all of the obligations secured by the Senior Mortgage are paid and satisfied in full.

7.2 Waiver of Rights and Defenses: To the full extent Borrower and Mortgagor may do so, Borrower and Mortgagor agree with Mortgagee as follows:

(A) Borrower and Mortgagor hereby waive and will not at any time insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisement, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Mortgagor, for itself and its successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property, hereby waives and releases all rights of redemption, valuation, appraisement, notice of intention to mature or declare due the whole of the Indebtedness, and all rights to a marshaling of the assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

(B) Borrower and Mortgagor hereby waive and shall not have or assert the matters set forth in subsection (A) of this Section, or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder, including sale of the Mortgaged Property for the collection of the Indebtedness and the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to any other person.

(C) If any statute or rule of law referred to in this Section and now in force, of which Borrower, Mortgagor, or any of its successors or assigns and such other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such statute or rule of law shall not thereafter be deemed to preclude the application of this Section.

(D) Borrower and Mortgagor shall not be relieved of their obligation to pay the Indebtedness or perform the Obligations at the time and in the manner provided in this Mortgage or any other of the Security Documents, nor shall the lien, security interest or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

priority of this Mortgage or any other of the Security Documents be impaired by any of the following actions, nonactions or indulgences by Mortgagee:

(i) any failure or refusal by Mortgagee to comply with any request by Borrower or Mortgagor, or to consent to any action by Borrower or Mortgagor, or to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or any other of the Security Documents;

(ii) any release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Indebtedness, or any person liable for payment of the Indebtedness;

(iii) any waiver by Mortgagee of compliance by Borrower or Mortgagor with any provision of this Mortgage or any other of the Security Documents, or consent by Mortgagee to the performance by Borrower or Mortgagor of any action which would otherwise be prohibited hereunder or thereunder, or to the failure by Borrower or Mortgagor to take any action which would otherwise be required hereunder or thereunder; and

(iv) any agreement or stipulation, with or without Borrower or Mortgagor's consent, between Mortgagee and any subsequent owner or owners of the Mortgaged Property or any other security for the Indebtedness, renewing, extending or modifying the time of payment or the terms of this Mortgage or any other of the Security Documents (including a modification of any interest rate), and in any such event Borrower and Mortgagor shall continue to be obligated to pay the Indebtedness at the time and in the manner provided in this Mortgage and the other of the Security Documents as so renewed, extended or modified, unless expressly released and discharged by Mortgagee.

ARTICLE VIII

CONDEMNATION

8.1 Application of Proceeds: If the Mortgaged Property or any part thereof, shall be condemned or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking, or injury to, the Mortgaged Property (the "Award") shall be paid first, pursuant to the terms and provisions of the Senior Mortgage in satisfaction of the indebtedness secured thereby or for the repair, restoration, replacement or rebuilding of all or any portion of the Mortgaged Property, and, second, to Mortgagee in accordance with the terms and provisions of this Mortgage. To enforce its rights hereunder, Mortgagee shall be entitled to participate in any condemnation proceedings and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation.

In case of a taking in which the cost of the restoration, repair or replacement (hereinafter referred to as the "Restoration") of the Mortgaged Property estimated by Mortgagee shall not exceed \$50,000.00 then such Award may be used for the prosecution of the Restoration in the manner hereinafter provided. If the cost of the Restoration estimated by Mortgagee shall exceed \$50,000.00 Mortgagee, at its option, shall be entitled to receive and retain the Award, applying the same upon the Indebtedness. In the event Mortgagee elects to make such Award available to Mortgagor for such purpose Mortgagee will (if such work is necessary to the continued operation of the Mortgaged Property as determined by Mortgagee in its reasonable discretion) promptly and at Mortgagor's sole cost and expense and regardless of whether the Award (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such taking subject to the conditions and restrictions applicable to Mortgagor's use of insurance proceeds contained in the second paragraph of Section 4.7 above.

In the event the Award exceeds the cost of any work to restore, repair, replace and rebuild the Mortgaged Property, following completion of such work Mortgagee shall apply such excess to the Indebtedness or pay such excess to Mortgagor if Mortgagor furnishes Mortgagee with an appraisal acceptable to Mortgagee concluding that the appraised value of the Mortgaged Property following such taking and work is at least two times the sum of (i) the outstanding balance of the Indebtedness and (ii) the remaining amount which Mortgagee may be obligated to advance under the Loan Agreement.

ARTICLE IX

SECURITY AGREEMENT

9.1 Security Interest: This Mortgage shall be construed as a mortgage on real property, and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article II hereof, a pledge and assignment and a security interest under the Illinois Uniform Commercial Code as to the property within the scope thereof and situated in the State of Illinois with respect to the Personality, Fixtures, Leases and Rents subject to the Permitted Encumbrances. Mortgagor has granted, bargained, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, convey, assign, transfer and set over unto Mortgagee a security interest in and to all of Mortgagor's right, title and interest in, to and under the Personality, Leases and Rents, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations subject to the Permitted Encumbrances. Upon an Event of Default, Mortgagor shall gather all of the Mortgaged Property which is Personality at a location designated by Mortgagee for sale pursuant to the terms hereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9.2 Financing Statements: Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Pursuant to the Illinois Uniform Commercial Code this Mortgage shall be effective as a Financing Statement filed as a fixture filing from the date of its filing for record covering the Fixtures and Personality. The addresses of Mortgagor, as Debtor, and Mortgagee, as Secured Party, are as set forth herein. The above described goods are or are to become fixtures related to the Land and Improvements of which Mortgagor is record title owner.

9.3 Uniform Commercial Code Remedies: Mortgagee shall have all the rights, remedies and recourses with respect to the Personality, Fixtures, Leases and Rents afforded a secured party by the aforesaid Illinois Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Security Documents and at law.

9.4 No Obligation of Mortgagee: The assignment and security interest herein granted shall not be deemed or construed to constitute Mortgagee as a trustee in possession of the Mortgaged Property, to obligate Mortgagee to operate the Mortgaged Property or attempt to do the same, or take any action, incur expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE X

MISCELLANEOUS

10.1 Survival of Obligations: Each and all of the Obligations shall survive the execution and delivery of the Security Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full.

10.2 Further Assurances: Borrower and Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may reasonably be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents, to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including, specifically, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property, and to complete, execute, record and file any document or instrument necessary to place third parties on notice of the liens and security interests granted under the Security Documents. Borrower and Mortgagor hereby irrevocably appoint Mortgagee as its agents to execute and deliver all such instruments and additionally to record and file any of the same as may be necessary.

10.3 Recording and Filing: Borrower and Mortgagor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

re-recorded and refilled in such manner and in such places as Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

10.4 Notices: Any notice, request or other communication required or permitted to be given hereunder may be given and shall conclusively be deemed and considered to have been given and received upon the deposit thereof, in writing, in the U.S. Mails, certified mail, return receipt requested, postage prepaid, and addressed to the party to receive such notice at the address set forth below or such address elected in writing by the party to receive such notice; but actual notice however given or received, shall always be effective. The last preceding sentence shall not be construed in any way to effect or impair the waiver of notice or demand to or upon Borrower or Mortgagee in any situation or for any reason (except as otherwise specifically provided).

If to Borrower or Mortgagor: Advanced Pulver Systems, Inc.
9999 Virginia Avenue
Chicago Heights, Illinois 60415
Attn: Bill E. Davis

with copy to: Wilson & McIlvaine
Citicorp Center
Suite 3700
500 West Madison Street
Chicago, Illinois 60661
Attn: Daniel C. McKny, Esq.

If to Mortgagee: The CIT Group/Credit Finance, Inc.
10 South LaSalle Street
Chicago, Illinois 60603
Attn: Richard Simons, Esq.

with copy to: Vedder, Price, Kaufman & Kammholz
222 North LaSalle Street
Suite 2500
Chicago, Illinois 60601
Attn: Michael A. Nemeroff, Esq.

10.5 No Waiver: Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Borrower or Mortgagor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of the same or of any other term, provision or condition thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Borrower and Mortgagor of any and all of such terms, provisions and conditions.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

10.6 Mortgagee's Right to Pay Indebtedness and Pay Obligations: If an Event of Default shall occur and be continuing under any of the Security Documents, then at any time thereafter and without further notice to or demand upon Mortgagor or any other party, without waiving or releasing any other right, remedy or recourse Mortgagee may have because of the same, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon with respect to the Mortgaged Property as it may deem necessary or appropriate. Mortgagor shall be obligated to repay Mortgagee for all sums advanced by it pursuant to this Section 10.6 and shall indemnify and hold Mortgagee harmless from and against any and all loss, cost, expense, liability, damage and claims and causes of action, including reasonable attorney's fees, incurred or accruing by any acts performed by Mortgagee pursuant to the provisions of this Section 10.6 or by reason of any other provision of the Security Documents. All sums paid by Mortgagee pursuant to this Section 10.6 and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the "Default Rate" as defined in the Loan Agreement from the date of such payment or expenditure, shall constitute additions to the Indebtedness and Obligations, shall be secured by the Security Documents and shall be paid by Mortgagor to Mortgagee upon demand.

10.7 Covenants Running with the Land: All obligations contained in the Security Documents are intended by the parties to be and shall be construed as covenants running with the Mortgaged Property.

10.8 Successors and Assigns: All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives and all other persons claiming by, through or under them.

10.9 Sovereignty: The Security Documents are intended to be performed in accordance with all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances or other instruments referred to hereinabove shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

10.10 Usury: All agreements in the Loan Agreement and all other Security Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Indebtedness or otherwise, shall the amount agreed to be paid hereunder for the use, forbearance or detention of money exceed the highest lawful rate permitted under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision of this Mortgage or any other of the Security Documents at the time performance of such provision shall be due, shall involve exceeding any usury limit prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligations to be fulfilled shall be reduced to allow compliance with such limit, and if, from any circumstance whatsoever, Mortgagee shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

be deemed a mistake and shall be canceled automatically or, if theretofore paid, such excess shall be credited against the principal amount of the Indebtedness to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be refunded immediately to Mortgagor. Borrower and Mortgagor hereby affirm that the Indebtedness was obtained, and the proceeds thereof have been and shall be used, solely for business purposes.

10.11 Entire Agreement and Modification: The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

10.12 Counterparts: This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

10.13 Headings and General Application: The article, paragraph and subparagraph entitlements hereof are inserted for convenience or reference only and shall in no way affect, modify or define, or be used in construing, the text of such article, paragraph or subparagraph. If the context requires, words used in the singular shall be read as including the plural, and pronouns of any gender shall include all genders.

10.14 Impositions and Insurance Escrow: To implement the provisions of Sections 4.4 and 4.6 hereof, upon the occurrence of an Event of Default and provided that the Senior Lender does not require Mortgagor to fund a similar escrow for the payment of the Impositions and insurance premiums pursuant to the terms of its recorded mortgage, Mortgagor, at Mortgagee's request, shall pay to Mortgagee in advance, as and when directed by Mortgagee and as escrowed sums, an amount equal to the sums of: (a) monthly, an amount reasonably determined by Mortgagee to be equal to the amount which, when added to the other monthly payments to be made prior to the due date of the annual Impositions, shall be sufficient to pay the annual Impositions (estimated wherever necessary) to become due for the tax year during which such payment is so directed; and (b) monthly, an amount reasonably determined by Mortgagee to be equal to the amount which, when added to the other monthly payments to be made prior to the due date of the insurance premiums, shall be sufficient to pay the insurance premiums for the same year for those insurance policies as are required hereunder. If Mortgagee determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Impositions and insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount so stated in Mortgagee's notice. The escrowed sums may be held by Mortgagee in non-interest bearing accounts and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the escrowed sums then in its possession to its assignee, whereupon Mortgagee shall then become completely released from all

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

liability with respect thereto. Upon payment of the Indebtedness and Obligations, or at such earlier time that Mortgagee may elect, the balance of the escrowed sums in its possession may be paid over to Mortgagor, and no other party shall have any right or claim thereto. If the Event of Default shall be cured by Mortgagor, the escrowed sums must be repaid to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Security Documents to pay the Impositions and the required insurance premiums or may be paid by Mortgagee directly to the Governmental Authority and the insurance company entitled thereto. If an Event of Default shall have occurred or be continuing hereunder, and Mortgagee has accelerated the maturity date of the Indebtedness as provided for herein, Mortgagee shall have the additional option of crediting the full amount of the escrowed sums against the Indebtedness. Notwithstanding anything to the contrary contained in this Section 10.14 or elsewhere in this Mortgage, Mortgagee hereby reserves the right to waive the payment by Mortgagor to Mortgagee of the escrowed sums and, in the event Mortgagee does so waive such payment, it shall be without prejudice to Mortgagee's right to insist, at any subsequent time or times, that such payments be made in accordance herewith.

10.15 Priority Of Senior Indebtedness: The covenants, agreements, and undertakings contained in this Mortgage and Security Agreement binding on Mortgagor are subject and subordinate to the provisions of and the covenants, agreements and undertakings contained in that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement dated August 31, 1995 and recorded in the Recorder's Office of Cook County on September 5, 1995 as Document Number 95 588570 made by Mortgagor in favor of the Senior Lender.

10.16 Sole Benefit: This instrument and the other Security Documents have been executed for the sole benefit of Borrower, Mortgagor and Mortgagee and the successors, assigns and legal representatives of Mortgagee. No other party shall have rights thereunder nor be entitled to assume that the parties thereto will insist upon strict performance of their mutual obligations hereunder, any of which may be waived from time to time. Borrower shall have no right to assign any of its rights under the Security Documents to any party whatsoever, including the right to receive advances under the Loan Agreement or otherwise.

10.17 Subrogation: If any or all of the proceeds of the Indebtedness or the Obligations have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind (including liens securing the payment of any Impositions), such proceeds have been advanced by Mortgagee at Mortgagor's request, and, to the extent of such funds so used, the Indebtedness and Obligations in this Mortgage shall be subrogated to and extend to all of the liens and titles heretofore existing against the Mortgaged Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former liens and titles, if any, shall not be waived, but rather shall be continued in full force and effect and in favor of Mortgagee and shall be merged with the lien and security for the repayment of the Indebtedness and satisfaction of the Obligations.

10.18 Business or Commercial Purpose: Borrower and Mortgagor warrant that the extension of credit evidenced by the Loan Agreement is solely for business or commercial purposes. Borrower further warrants that the credit transaction evidenced by the Loan Agreement is

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

specifically exempted under Regulation Z issued by the Board of Governors of the Federal Reserve System and Title I (Consumer Credit Cost Disclosure) of the Consumer Credit Protection Act and that no disclosures are required to be given under such regulations and federal laws in connection with the above transaction.

10.19 JURISDICTION AND VENUE: MORTGAGOR AND BORROWER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE OR THE OTHER SECURITY DOCUMENTS SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION OR, IF MORTGAGEE INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. BORROWER AND MORTGAGOR HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREE THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY ACTUAL DELIVERY OR REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER AND MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT HEREIN. BORROWER AND MORTGAGOR WAIVE ANY CLAIM THAT THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OR THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER OR MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER AND MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST BORROWER OR MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS, PROVIDED, HOWEVER, MORTGAGEE MAY NOT SEEK A DEFAULT JUDGMENT FOR AT LEAST THIRTY (30) DAYS AFTER THE DATE OF PROOF OF SERVICE. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER AND MORTGAGOR SET FORTH HEREIN SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER AND MORTGAGOR HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

10.20 WAIVER OF RIGHT TO JURY TRIAL: BORROWER, MORTGAGOR AND MORTGAGEE ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE TRUST OR ANY OF THE OTHER SECURITY DOCUMENTS OR WITH RESPECT TO THE TRANSACTION CONTEMPLATED THEREBY

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND, THEREFORE, THE PARTIES AGREE THAT ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

10.21 APPLICABLE LAW: THIS MORTGAGE AND THE OTHER SECURITY DOCUMENTS SHALL BE DEEMED TO HAVE BEEN, DELIVERED AND ACCEPTED IN, AND THIS MORTGAGE AND THE OTHER SECURITY DOCUMENTS SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS AND DECISIONS OF THE STATE OF ILLINOIS (WITHOUT REGARD FOR ITS CONFLICTS OF LAW PRINCIPLES), AND BY EXECUTION HEREOF, MORTGAGOR AND BORROWER, AND BY ACCEPTANCE HEREOF, MORTGAGEE, EACH AGREE THAT SUCH LAWS AND DECISIONS OF THE STATE OF ILLINOIS SHALL GOVERN THIS MORTGAGE OF TRUST AND THE OTHER SECURITY DOCUMENTS, NOTWITHSTANDING THE FACT THAT THERE MAY BE OTHER JURISDICTIONS WHICH MAY BEAR A REASONABLE RELATIONSHIP TO THE TRANSACTIONS CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT WITH RESPECT TO THE PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO THE CREATION, VALIDITY, PERFECTION AND ENFORCEMENT BY MORTGAGEE OF ITS RIGHTS AND REMEDIES AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL LOCATED IN ANY STATE OTHER THAN ILLINOIS, SUCH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED.

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Executed as of the date first above written.

MORTGAGOR:

HERITAGE TRUST COMPANY, NOT
PERSONALLY BUT AS TRUSTEE UNDER
TRUST AGREEMENT DATED
AUGUST 26, 1991 AND KNOWN AS
TRUST NO. 91-4404

Connie Hebl
Assistant Trust Officer

By: *Linda Lee Lutz*
Name: LINDA LEE LUTZ
Title: Land Trust Officer

BORROWER:

ADVANCED PULVER SYSTEMS, INC.
an Illinois corporation

By: *D. G. Harsli Barker*
Name: D. G. HARSII BARKER
Title: CEO

ENVIRONMENTAL EXONERATION RIDER ATTACHED
HEREIN IS EXPRESSLY MADE A PART HEREOF.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

THE STATE OF IL

COUNTY OF COOK

On this 30th day of March, 1998, before me appeared LINDA LEE LITZ *Land Trust Officer of Donna J. Wroblewski Assistant Trust Officer*, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Heritage Trust Company, acting as Trustee under Trust Agreement dated August 26, 1991 and known as Trust No. 91-4404 and not personally, and that said instrument was signed on behalf of said trust company pursuant to the written instruction of the holders of the power of direction thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Beth O'Hagan

Notary Public
Beth O'Hagan
Notary Public, State of Illinois
My Commission Expires Feb. 25, 2001

My Commission Expires:

THE STATE OF Illinois

COUNTY OF Cook

On this 30th day of March, 1998, before me appeared DEONDAESHBARGER, to me personally known, who being by me duly sworn, did say that he is the CFO of Advanced Pulver Systems, Inc., an Illinois corporation and that said instrument was signed on behalf of said company by authority of its Board of Directors and said CFO acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Daniel C. McKay

Notary Public

My Commission Expires:

"OFFICIAL SEAL"
DANIEL C. MCKAY
Notary Public, State of Illinois
My Commission Expires 10/20/2000

VPC1101/9315387.6

UNOFFICIAL COPY

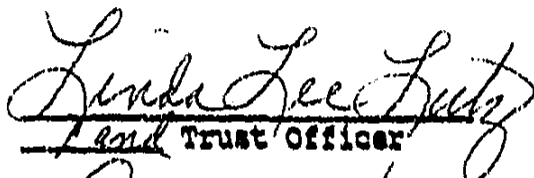
Property of Cook County Clerk's Office

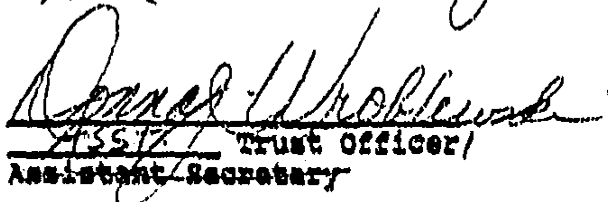
UNOFFICIAL COPY

GENERAL RIDER

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee, are nevertheless, each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and for purposes of liability limited to that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee, and that no personal responsibility is assumed by nor shall at any time be asserted or enforceable against Heritage Trust Company, under said Trust Agreement on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

HERITAGE TRUST COMPANY


Linda Lee Lutz
Trust Officer


Donald W. Hokeness
Trust Officer/
Assistant Secretary

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGE ENVIRONMENTAL EXONERATION RIDER

HERITAGE TRUST COMPANY, as Trustee or Successor Trustee to Bremen Bank & Trust Company, Heritage Bremen Bank & Trust Company, County Bank & Trust Company, Heritage County Bank & Trust Company, Heritage Bank & Trust Company, and Alsip Bank & Trust Company under the aforesaid Trust Agreement, has, to the best of its knowledge, no independent knowledge and has not conducted and will not conduct any investigation as to any environmental issues, conditions, circumstances, statements, representations, covenants, undertakings, indemnifications, or warranties made, granted, extended, or asserted whether expressly made or implied by any document to which this exculpation and the Trustee's signature are attached, regardless of whether said issues, conditions, circumstances, statements, representations, covenants, undertakings, indemnifications, or warranties are contained herein, or formed a part of the consideration or inducement for the execution of this document to or for the party whose benefit this instrument is being executed. Further, said Trustee hereby represents that, to the best of its knowledge, it does not now have, nor has it ever had, any use, possession, management, control, rights or responsibilities with regard to the real property to which title is held under this Land Trust.

This document is executed by the Trustee not personally, but solely as Trustee aforesaid in the exercise of power and authority conferred upon and vested in it as such Trustee, and the undersigned hereby represents that, to the best of its knowledge, it possesses full power and authority to execute this instrument. Further, this document has been executed solely upon the direction of the beneficiaries of this Trust who have the power to make such direction and any other party(ies) holding the power of direction.

Any provision in this document, including all warranties, indemnities, representations, covenants, undertakings and agreements to the contrary notwithstanding, it is expressly understood and agreed that nothing herein shall be construed as creating any liability on the undersigned personally or to perform any covenants either expressed or implied herein. All such liability, if any, is hereby expressly waived by the party for whose benefit this instrument is being executed and by every person now or hereafter claiming any right or security hereunder. By acceptance of this instrument, the party for whose benefit this instrument is being executed agrees to look solely to the premises hereby conveyed for the payoff thereof, by the enforcement of the lien hereby created, in the manner herein provided or by action to enforce the personal liability of the guarantor, if any, and not to the Trustee personally, for any liability and obligation created hereby.

Trustee has affixed its exculpatory clause limiting the Trustee's liability under this document, and acceptance of this document by the party for whose benefit this instrument is being executed shall be deemed acceptance of the terms, conditions, and provisions of this exculpatory rider.

HERITAGE TRUST COMPANY

ATTEST

Ronald W. Hobbes
Asst. Trust Officer
Assistant Secretary

Panda Lee Kelly
Assistant Trust Officer
Land

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit "A"

LEGAL DESCRIPTION

Lot 15 and the North ½ of Lot 16 in The Park At Chicago Ridge, Being A Subdivision of Part of Section 7, Township 37 North, Range 13, East of the Third Principal Meridian, In Cook County, Illinois.

Common Address: 9999 Virginia Avenue
Chicago Ridge, Illinois 60415

Property Index Numbers: 24-07-312-002-0000
24-07-312-022-0000

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit "B"

PERMITTED ENCUMBRANCES AND TITLE EXCEPTIONS

1. The second installment of real estate taxes for the year 1997 and subsequent years not yet due and payable.
2. Mortgage dated August 31, 1995 and recorded September 5, 1995 as Document Number 95588570 made by Heritage Trust Company, as Trustee under Trust Agreement dated August 25, 1991 and known as Trust Number 91-4404, to LaSalle National Bank to secure an indebtedness in the amount of \$2,800,000.00, as same may be amended, modified or restated from time to time. Borrower and Mortgagor have covenanted and agreed that the principal amount secured by this Mortgage will not exceed \$2,200,000.
3. Security interest of LaSalle National Bank, as Secured Party, in certain described chattels on the land, as disclosed by financing statement executed by Advanced Pulver Systems, Inc., Debtor, and filed September 5, 1995 as Document Number 95U11121, which shall be partially released to remove all liens except for liens on fixtures relating to the real estate described therein.
4. Terms, provisions, and conditions contained in Notice of Requirements For Storm Water Detention recorded April 21, 1980 as Document Number 25431332.
5. Possible flood risks affecting the land and other land based upon data available to the Department of Transportation as disclosed by a letter recorded November 21, 1986 as Document Number 86555644.
6. Terms, provisions and conditions in Declaration of Easement dated June 19, 1987 and recorded July 9, 1987 as Document Number 87376841 made by First National Bank of Evergreen Park, as Trustee under Trust Agreement dated March 13, 1986 and known as Trust Number 8987.
7. Easement for public utilities and drainage as shown on plat of the Park at Chicago Ridge Subdivision recorded November 26, 1986 as Document Number 86555644 over the east 10 feet of the land.
8. A 20 foot building line shown on plat of the Park at Chicago Ridge Subdivision aforesaid over the westerly line of the land.
9. Grant contained in plat of the Park at Chicago Ridge Subdivision aforesaid to Commonwealth Edison Company, Illinois Bell Telephone Company, Northern Illinois Gas Company and Consolidated Cable Television Company, and other utility companies providing electric or communications services, their respective successors and assigns, jointly or severally, of easement rights to all platted easements designated "public utility easements" and jointly with city

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

utilities, to install, operate, maintain, and remove from time to time, facilities used in connection with the transmission and distribution of electricity and sounds and signals, together with the right to install required service connections to serve the improvements of each lot; also the right to trim and keep trimmed any trees, shrubs or saplings that interfere or threaten to interfere with any of said public utility equipment. No permanent building shall be placed on said easement areas but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights as granted.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office