

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

Michael A. Nemeroff, Esq.
Vedder, Price, Kaufman & Kammholz
222 N. LaSalle Street
Suite 2400
Chicago, IL 60601

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (the "Assignment") dated as of this 30th day of March, 1998 is made and executed by Heritage Trust Company, as Trustee under Trust Agreement dated August 26, 1991 and known as Trust Number 91-4404 ("Assignor"), in favor of The CIT Group/Credit Finance, Inc. (the "Lender" or the "Assignee").

WITNESSETH:

WHEREAS, Assignor has requested that Lender lend money to Advanced Pulver Systems, Inc., an Illinois corporation ("Borrower"), which monies Lender has agreed to lend to Borrower pursuant to the Loan Documents (as hereinafter defined), all as more fully described hereinafter;

WHEREAS, Lender has agreed to make a loan to Borrower in the principal amount of Two Million and 00/100 Dollars (\$2,000,000.00) (the "Loan"), which Loan is evidenced by a Loan and Security Agreement of even date herewith between Lender and Borrower ("Loan Agreement"), and the Loan is secured by, among other things, a Mortgage and Security Agreement of even date hereof (the "Mortgage") executed by Assignor in favor of Lender as may be amended, modified or restated from time to time; and

WHEREAS, as a condition precedent to Lender extending any financial accommodation to Borrower whether under the Loan Agreement or otherwise, Lender has requested that Assignor execute and deliver this Assignment of Rents and Leases to Lender, and any loan or other financial accommodation made by Lender to Assignor, as the case may be, under the Loan Agreement shall be made in reliance upon the execution and delivery of this Assignment.

GRANTING CLAUSES

In consideration of the foregoing loan to Borrower, which Assignor acknowledges was made at the request of and benefits Assignor, and the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Assignor does hereby assign, transfer and set over unto Assignee, all right, title and interest of the Assignor in, under or pursuant to any and all present or future leases or subleases,

BOX 335-011

1401 - 772278
2 of 2

10

UNOFFICIAL COPY

Property of Cook County Clerk's Office

whether written or oral, or any lettings of possession of, or any agreements for the use or occupancy of, the whole or any part of the real estate and premises hereinafter described which the Assignor may have heretofore made or agreed to or may hereafter make or agree to, or which may be made or agreed to by the Assignee under the powers hereinafter granted, including all amendments and supplements to and renewals thereof at any time made (collectively, the "Leases"), relating to that certain real estate situated in the County of Cook, State of Illinois, described in Schedule I attached hereto and made a part hereof and the improvements now or hereafter erected thereon (the "Premises"), including, without limiting the generality of the foregoing, all right, title and interest of Assignor in and to all the rents (whether fixed or contingent), earnings, renewal rents and all other sums due or which may hereafter become due under or by virtue of the Leases and all rights under or against guarantors of the obligations of lessees and obligors under the Leases.

This Assignment is made and given as collateral security for, and shall secure (i) the payment in full of all principal of and interest on the Loan, (ii) the performance of all obligations, covenants, promises and agreements contained herein, in the Mortgage, the Loan Agreement and any and all other indebtedness intended to be secured thereby, (iii) the performance of all obligations, covenants, promises and agreements of the Assignor contained in any loan or other agreements setting forth terms and conditions applicable to the loan evidenced by the Loan Agreement or providing collateral security therefrom, (iv) the payment of all expenses and charges, legal or otherwise, paid or incurred by the Assignee in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i), (ii) and (iii) or any security therefore, including this Assignment (the Loan Agreement, the Mortgage and the other indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii) and (iv) above being hereinafter collectively referred to as the "indebtedness hereby secured").

After the occurrence of an Event of Default (as said term is defined in the Loan Agreement), the Assignor does hereby irrevocably constitute and appoint the Assignee the true and lawful attorney of the Assignor with full power of substitution for Assignor and in Assignor's name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums due or to become due under any Lease, with full power to settle, adjust or compromise any claim thereunder as fully as the Assignor could do, and to endorse the name of the Assignor on all commercial paper given in payment or in part payment thereof, and in the Assignee's discretion to file any claim or take any other action or proceeding, either in the Assignee's name or in the name of the Assignor or otherwise, which the Assignee may deem necessary or appropriate to protect and preserve the right, title and interest of the Assignee in and to such sums and the security intended to be afforded hereby. Provided, however, Assignee shall not exercise any of the rights granted in this paragraph unless and until all of the obligations secured by the LaSalle Assignment (hereinafter defined) are paid and satisfied in full.

This Assignment of Rents and Leases is subject, subordinate, and junior to that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement dated August 31, 1995 executed by Assignor in favor of LaSalle National Bank ("LaSalle Assignment") and recorded in the Cook County Recorder of Deeds, Cook County, Illinois, on September 5, 1995 as document number 95588570.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

The Assignor warrants to the Assignee that the Assignor has good right to make this Assignment and that the Assignor has not heretofore alienated, assigned, pledged or otherwise disposed of any of the rights, rents and other sums due or which may hereafter become due and which are intended to be assigned hereunder, except for the LaSalle Assignment.

This Assignment includes and establishes a present, absolute and secondary transfer and assignment of all rents, earnings, income, issues and profits from the Leases, subject and subordinate at all times to the LaSalle Assignment, but so long as no Event of Default shall exist under the Loan Agreement or the Mortgage, the Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due by virtue of any Lease as they respectively become due, but not more than thirty (30) days in advance.

The Assignor hereby irrevocably consents to and authorizes and directs that the tenant or other obligor under any Lease upon demand and notice from the Assignee of the Assignee's right to receive rents and other sums hereunder, shall pay such rents and other sums to the Assignee after an Event of Default without any obligation on the part of such tenant or other obligor to determine the actual existence of any default or event claimed by the Assignee as the basis for the Assignee's right to receive such rents or other sums and notwithstanding any notice from or claim of the Assignor to the contrary. The Assignor hereby waives any right or claim against any tenant or other obligor for any such rents and other sums paid by tenant or other obligor to the Assignee. Provided, however, Assignee shall not exercise any of the rights granted in this paragraph unless and until all of the obligations secured by the LaSalle Assignment are paid and satisfied in full.

Without limiting any legal rights of the Assignee as the junior assignee of the rents, issues and profits of the Leases and in furtherance thereof, Assignor agrees that after an Event of Default under the Mortgage or the Loan Agreement, whether before or after the Loan is declared due in accordance with its terms, the Assignee may, at its option, (i) take actual possession of the Premises hereinabove described, or of any part thereof, personally or by agent or attorney, as for condition broken, and with or without force and with process of law, enter upon, take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts relating thereto, and exclude the Assignor, its agents or servants, therefrom and hold, operate, manage and control the Premises, and at the expense of the Assignor, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the Premises as may seem judicious, and pay taxes, assessments and prior or proper charges on the Premises, or any part thereof, and insure and reinsure the same, and lease the Premises in such parcels and for such times and on such terms as Assignee may deem fit, including leases for terms expiring beyond the maturity of the indebtedness secured by said Mortgage, and cancel any lease or sublease for any cause or on any ground which would entitle the Assignor to cancel the same and in every such case have the right to manage and operate the said Premises and to carry on the business thereof as the Assignee shall deem proper or (ii) with or without taking possession of the Premises, Assignee may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing Assignee shall not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations

UNOFFICIAL COPY

Property of Cook County Clerk's Office

of Assignor arising thereunder or in respect thereof. Provided, however, Assignee shall not exercise any of the rights granted in this paragraph unless and until all of the obligations secured by the LaSalle Assignment are paid and satisfied in full.

Any sums received by Assignee under or by virtue of this Assignment shall be applied to the payment of or on account of the following in such order and manner as Assignee may elect:

- (a) to the payment of all proper charges and expenses, including the just and reasonable compensation for the services of Assignee, its attorneys, agents, clerks, servants and others employed in connection with the operation, management and control of the Premises and the conduct of the business thereof;
- (b) to the payment of any sum secured by a lien or encumbrance upon the Premises;
- (c) to the cost of completing any improvements being constructed on or about the Premises at the time of taking over the Leases; and
- (d) to the reduction of the indebtedness hereby secured, whether or not the same may then be due or be otherwise adequately secured.

The manner of application of such sums and the items which shall be credited or paid out of same shall be within the sole discretion of Assignee and nothing contained herein shall obligate Assignee to use any such sums for a purpose other than reducing the indebtedness hereby secured unless it shall elect to do so. Assignee shall be subrogated to any lien discharged out of the rents, income and profits of the Premises.

Assignor hereby further covenants that the Assignor will, upon request of the Assignee, execute and deliver such further instruments and do and perform such other acts and things as the Assignee may reasonably deem necessary or appropriate to more effectively vest in and secure to the Assignee the rights and rents which are intended to be assigned to the Assignee hereunder. Assignor irrevocably waives any right it now or hereafter may have to offset any claim or liability owing from it to any obligor on a Lease against sums due or to become due from such obligor under a Lease.

Assignor covenants and agrees to observe and perform all of the obligations imposed on it under the Leases and not to do or permit to be done anything to impair the security thereof, not to execute any Lease without the written consent of Assignee, not to further assign or encumber its rights under the Leases or its rights to the rents or other sums due or to become due thereunder and not suffer or permit any of the Leases to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the written consent of Assignee. Assignor further covenants and agrees not to amend, modify or terminate any of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Leases without the prior written consent of Assignee, provided that unless and until an Event of Default has occurred under the terms of the Mortgage or the Loan Agreement, Assignor may enter into amendments and modifications to Leases which do not adversely affect the security thereof and may terminate the Leases if substantially concurrently with such termination, it shall have entered into a new Lease of the space which was the subject of the terminated Lease upon terms and conditions no less beneficial to it than those contained in the terminated Lease and with a lessee of at least equal creditworthiness to the terminated lessee, provided that the foregoing to the contrary notwithstanding no Lease shall be terminated if such termination would reduce the amount which any lender is then obligated to fund under any commitment issued to provide financing for the Premises. Assignor further covenants and agrees that it will, at the request of Assignee, submit the executed originals of all Leases to Assignee.

The acceptance by the Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the Premises by the Assignee, be deemed or construed to constitute the Assignee a mortgagee in possession nor impose any obligation whatsoever upon the Assignee, it being understood and agreed that the Assignee does not hereby undertake to perform or discharge any obligation or liability of the landlord under any Leases or under or by reason of this Assignment. Assignee shall have no liability to Assignor or anyone for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Subject to the limitation imposed by the preceding sentence, should the Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense against any claim or demand whatsoever which may be asserted against the Assignee arising out of any Lease, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Loan at the time of incurrence (or if the Loan has been paid in full at the time of incurrence, then at the rate applicable to the Loan at the time of such payment in full), shall be secured by this Assignment and by the Mortgage, and the Assignor shall reimburse the Assignee therefore immediately upon demand, Assignor's obligation to so pay shall survive payment of the indebtedness hereby secured and the release of this Assignment.

The rights and remedies of the Assignee hereunder are cumulative and are not secondary to or in lieu of, but are in addition to any rights or remedies which the Assignee shall have under the Loan Agreement, the Mortgage or any other instrument or document or under applicable law and the exercise by Assignee of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Assignee, whether arising under the Mortgage or otherwise, each and all of which may be exercised whenever Assignee deems it in its interest to do so. The rights and remedies of the Assignee may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Assignee to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

The right of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Mortgage, including any period allowed by law for the redemption of the Premises after any exercise by Assignee of its power of sale.

This Assignment shall be assignable by the Assignee and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby.

Assignor hereby agrees that all actions or proceedings initiated by Assignor and arising directly or indirectly out of this Assignment of Rents and Leases or the other Security Documents (as defined in the Mortgage) 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 Assignee initiates such action, in addition to the foregoing courts any court in which Assignee shall initiate such action, to the extent such court has jurisdiction. Assignor hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by Assignee in any of such courts and hereby waives personal service of the summons and complaint, or other process or papers issued therein, and agrees 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 Assignor at the address to which notices are to be sent herein. Assignor waives any claim that the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division is an inconvenient forum or an improper forum based on lack of venue. Should Assignor, 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, Assignor shall be deemed in default and an order and/or judgment may be entered by Assignee against Assignor as demanded or prayed for in such summons, complaint, process or papers, provided, however, Assignee 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 Assignee set forth herein shall not be deemed to preclude the enforcement, by Assignee, of any judgment obtained in any other forum or the taking, by Assignee, of any action to enforce the same in any other appropriate jurisdiction, and Assignor hereby waives the right to collaterally attack any such judgment or action.

Assignee and Assignor acknowledge and agree that any controversy which may arise under this Assignment of Rents and Leases or any of the other Security Documents or with respect to the transaction contemplated thereby 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.

This Assignment of Rents and Leases and the other Security Documents shall be deemed to have been, delivered and accepted in, and this Assignment of Rents and Leases 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 Assignor and by acceptance hereof, Assignee, each agree that such laws and decisions of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

State of Illinois shall govern this Assignment of Rents and Leases 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 Assignee 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.

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the date first above written.

HERITAGE TRUST COMPANY, NOT PERSONALLY, BUT AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 26, 1985 AND KNOWN AS TRUST NUMBER 91-4404

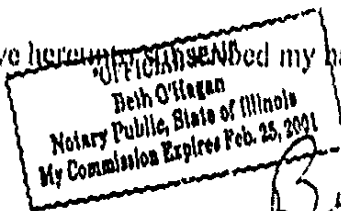
Donna J. Wroblowski
Assistant Trust Officer

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

THE STATE OF IL §
§
COUNTY OF COOK §

On this 30th day of March, 1998, before me appeared Linda Lee Lutz, to me personally known, who being by me duly sworn, did say that he/she is the Assistant Trust Officer of Heritage Trust Company, acting as Trustee under Trust Agreement dated August 26, 1991 and known as Trust Number 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

My Commission Expires:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

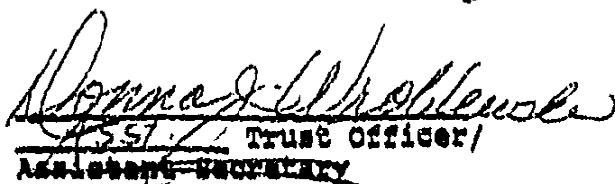
UNOFFICIAL COPY

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 Sutz
Trust Officer


Donna J. Wholen
Asst. 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

Donald W. Coleman
Assistant Trust Officer
Assistant Secretary

Therese Lee Lutz
Assistant Trust Officer
Lutz

UNOFFICIAL COPY

Property of Cook County Clerk's Office

SCHEDULE 1

LEGAL DESCRIPTION

Lot 15 and the North 1/2 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