

2054

THIS IS A FUTURE ADVANCE
MORTGAGE

STATE OF ALABAMA)

SHELBY COUNTY)

SECOND PRIORITY ACCOMMODATION MORTGAGE

This Second Priority Accommodation Mortgage (the "Mortgage") made and executed on this 26 day of June, 1987 by and between:

MORTGAGOR: JAMES P. POE (a/k/a James Powell Poe), a married man, and his wife, LALA ANN POE (hereinafter referred to collectively as "Mortgagor"), and

MORTGAGEE: FIRST COMMERCIAL BANK (hereinafter referred to as "Mortgagee").

WITNESSETH:

WHEREAS, Alloys, Inc. has become justly indebted to Mortgagee in the principal sum of up to One Hundred Fifty Thousand Dollars (\$150,000.00) together with interest thereon, as evidenced by a master promissory note of even date herewith (the "Note"); and

WHEREAS, the Mortgagor has entered into a Guaranty Agreement of even date herewith (the "Guaranty") wherein the Mortgagor has guaranteed the prompt, complete and faithful performance of Alloys, Inc. as required by and in the Note; and

WHEREAS, it is desired by the parties hereto to secure the prompt, complete and faithful performance of the Mortgagor as required by and in the Guaranty.

NOW, THEREFORE, in consideration of the premises and in order to secure the payment and other performance by the Mortgagor of and under the Guaranty, and any extensions, renewals and modifications of same, and any charges herein incurred by Mortgagee on account of Mortgagor, including, but not limited to attorney's fees, and any and all other indebtedness of Mortgagor to Mortgagee, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Guaranty and as may be set forth in instruments evidencing or securing any other indebtedness of Mortgagor to Mortgagee, the undersigned Mortgagor does hereby assign, grant, bargain, sell and convey unto Mortgagee, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures and personal property, to-wit:

BOOK 138 PAGE 637

LAND TITLE COMPANY
317 NORTH 20TH STREET
BIRMINGHAM 25212

(a) All that tract or parcel or parcels of land particularly described in Exhibit "A" attached hereto and, by this reference, incorporated herein for all purposes.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the above-described land, and all fixtures, of every nature whatsoever now or hereafter owned by the Mortgagor and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

BOOK 138 PAGE 638
TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor (all of which is hereinafter referred to as the "Mortgaged Property").

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Mortgagee, its successors and assigns forever; subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if the Mortgagor shall fully perform or otherwise discharge or terminate their Obligations, as defined in the Guaranty (which Obligations include without limitation the debt evidenced or to be evidenced by the Note, including future advances, and interest thereon, and all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising), and reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of liens or insurance premiums, and interest thereon, and fulfill all of their other obligations under this mortgage, and if the Mortgagee has no obligation to extend any further credit to or for the account of the Mortgagor, and if there is in existence no contingent liability of the Mortgagor that is secured by this mortgage, then this conveyance shall be null and void but shall otherwise remain in full force and effect.

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

ARTICLE I

1.01 Junior Mortgage. This Mortgage is junior and subordinate to that certain mortgage from Roger W. Varner and Debra C. Varner to Jackson Company, dated 11/5/80, recorded in Volume 407, page 381, in the Probate Office of Shelby County, Alabama, and assigned to Birmingham Trust National Bank in Misc. Vol. 38, page 352, in said Probate Office, and assumption agreement recorded in Misc. Vol. 51, page 785, in said Probate Office (hereinafter sometimes referred to as the "First Mortgage"). It is specifically agreed that in the event default should be made in the payment of principal, interest or any other sums payable under the terms and provisions of the First Mortgage, the Mortgagee shall have the right, without notice to anyone, but shall not be obligated, to make good such default by paying whatever amounts may be due under the terms of the First Mortgage so as to put the same in good standing, and any and all payment so made shall be added to the obligations secured by this Mortgage and the indebtedness (including all such payments) shall be immediately due and payable, at the option of the Mortgagee, and this Mortgage shall be subject to foreclosure in all respects as provided by law and by the provisions hereof.

1.02 Authorization. The Mortgagor hereby authorizes the holder of the First Mortgage, at its option, to disclose to the Mortgagee the following information: (a) the amount of indebtedness secured by such mortgage; (b) the amount of such indebtedness that is unpaid; (c) whether any amount owed on such indebtedness is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; and (e) any other information regarding such mortgage or the indebtedness secured thereby which the Mortgagee may reasonably request from time to time.

ARTICLE II

2.01 Performance of Guaranty and Mortgage. The Mortgagor will perform, observe and comply with all provisions hereof and of the Guaranty secured hereby and will duly and punctually pay to the Mortgagee all sums required under the Guaranty and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

2.02 Warranty of Title. The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid.

2.03 Taxes, Utilities and Liens. (a) The Mortgagor will pay promptly, when and as due, and will promptly exhibit to the Mortgagee receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Mortgagor will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) The Mortgagor shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

2.04 Insurance. The Mortgagor shall keep the Mortgaged Property continuously insured, in such manner and in such companies as may be satisfactory to the Mortgagee and the holder of the First Mortgage, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsements. If the Mortgagor fails to keep the Mortgaged Property insured as specified above, then, at the election of the Mortgagee and without notice to any person, the Mortgagee may declare the Guaranty in default and this Mortgage subject to foreclosure, and this Mortgage may be foreclosed, as herein provided; and regardless of whether the Mortgagee declares the Guaranty in default and this Mortgage subject to foreclosure, the Mortgagee may, but shall not be obligated to, insure the Mortgaged Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risk of loss, for his own benefit, the proceeds from such insurance (less cost of collecting same), if collected, to be credited against all amounts due under the Guaranty, or, at the election of the Mortgagee, such proceeds may be used in repairing or reconstructing the Improvements located on the Mortgaged Property. All amounts spent by the Mortgagee for insurance shall become a debt due by the Mortgagor to the Mortgagee and at once payable, without demand upon or notice to the Mortgagor, and shall be secured by the lien of this Mortgage.

BOOK 138 PAGE 640

2.05 Condemnation. If all or a material portion of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in the Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby and by the Guaranty shall at the option of the Mortgagee become immediately due and payable. Subject to the rights of the holders of the First Mortgage, the Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. Subject to the rights of the holder of the First Mortgage, all such compensation, awards, damages, claims, rights of action and proceeds and the rights thereto are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom all of its expenses, including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agree to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Mortgagee may require.

2.06 Care of the Property. (a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee. The Mortgagor may remove, demolish or substantially alter leasehold improvements in the Mortgaged Property to the extent necessary to prepare and complete premises located therein for occupancy by tenants under written Lease Agreements with Mortgagor. The Mortgagor may further sell or otherwise dispose of, free from the lien of this Mortgage, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Ten Thousand Dollars (\$10,000.00) for any single transaction, or a total of Twenty Five Thousand Dollars (\$25,000.00) in any one year, upon replacing the same by, or substituting for the same other fixtures or appurtenances not necessarily of the same character, but of at least equal value to the Mortgagor and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged materially by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Mortgagee.

(d) The Mortgagee is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will promptly restore the Mortgaged Property to the equivalent of its original condition. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to the Mortgagee.

2.07 Further Assurances: After Acquired Property. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause and to be made, executed and delivered, to the Mortgagee and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by the Mortgagee any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a prior lien upon all of the Mortgaged Property excepting only the prior liens of the First Mortgages, whether now owned or hereafter acquired by the Mortgagor. The lien hereof will automatically attach, without further act, to all acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

2.08 Leases Affecting Mortgaged Property. The Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Mortgagee, Mortgagor will furnish Mortgagee with executed copies of all leases now or hereafter created on said premises. Mortgagor will not accept payment of rent more than one (1) month in advance without the express written consent of Mortgagee.

2.09 Expenses. The Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses incurred by the Mortgagee in any action, proceeding or dispute of any kind in which the Mortgagee is made a

BOK 138 PAGE 642

party, or appear as party plaintiff or defendant, affecting the Note, Mortgage, Guaranty, Mortgagor or Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be added to the Indebtedness and secured by the lien of this Mortgage.

2.10 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium, in the procurement of insurance coverage, or in the performance or observance of any other covenant, condition or term of this Mortgage, then the Mortgagee, at its option may perform or observe the same, and all payments made for costs or incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the rate of eighteen percent (18%) per annum. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

2.11 Books and Records. The Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of the Mortgagee, the Mortgagor will furnish to the Mortgagee within ninety (90) days after the end of the Mortgagor's fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Mortgagee and a rent schedule of the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

2.12 Estoppel Affidavits. The Mortgagor within thirty (30) days after written request from the Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

ARTICLE III

3.01 Event of Default. The term Event of Default, wherever used in the Mortgage, shall mean any one or more of the following events:

(a) Failure by the Mortgagor to pay as and when due and payable any installments of principal, interest, or escrow deposits, if any, due under the Note or the Guaranty within ten (10) days after written notice to Mortgagor; or

(b) Failure by the Mortgagor to duly observe any other covenants, condition or agreement of this Mortgage within thirty (30) days after written notice of default to Mortgagor; provided, however, if such default shall reasonably require longer than thirty (30) days to cure, if Mortgagor shall fail to commence to cure same within said thirty (30) days after written notice of default and continuously prosecute the curing of the same to completion with due diligence; or

(c) The filing by the Mortgagor of a voluntary petition in bankruptcy or the Mortgagor's adjudication as a bankrupt or insolvent, or the filing by the Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Mortgagor seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Mortgagor or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The endangering of the interest of the Mortgagee in the Mortgaged Property by reason of the enforcement of any prior lien or encumbrance (including, but not limited to, foreclosure or other enforcement of the First Mortgage) therein; or

(e) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(f) The sale or other divestment of title to the Mortgaged Property without Mortgagee's prior written consent.

BOOK 138 PAGE 644

3.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the Indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

3.03 Right of Mortgagee to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, and subject to the rights of the holders of the First Mortgages, shall forthwith surrender to the Mortgagee the actual possession, and if and to the extent permitted by law, the Mortgagee may enter and take possession of all the Mortgaged Property, and may exclude the Mortgagor and its agents and employees wholly therefrom.

BOOK 138 PAGE 645
(b) Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be to his best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges prior to the lien of this Mortgage as the Mortgagee may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys of the Mortgagee; shall apply the remainder of the monies so received by the Mortgagee, first to the payment of accrued interest; and then to the payment of overdue installments of principal.

(c) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at his option, surrender possession of the Mortgaged Property to the Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3.04 Receiver. (a) If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the Indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Mortgagor will pay to the Mortgagee upon demand all expenses including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions contained in this paragraph 3.04; and all such expenses shall be secured by this Mortgage.

3.05 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Guaranty or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Mortgagee shall deem most effectual for such purposes. The Mortgagee shall take action either by such proceedings or by the exercise of his powers with respect to entry or taking possession, as the Mortgagee may determine.

3.06 Power of Sale. If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect.

3.07 Application of Foreclosure Proceeds. Subject to the rights of the holders of the First Mortgage, the proceeds of any foreclosure sale pursuant to Paragraph 3.06 of Article III shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said Indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the Indebtedness hereby specially secured with interest to date of sale;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

BOOK 138 PAGE 647
3.08 Mortgagee's Option on Foreclosure. At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose the Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

3.09 Waiver of Exemption. Mortgagor waives all rights of exemption pertaining to real property as to any Indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the Indebtedness secured hereby.

3.10 Suits to Protect the Mortgaged Property. The Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of the Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Mortgagee.

3.11 Mortgagor to Pay the Guaranty on Any Default in Payment: Application of Monies by Mortgagee. If default shall be made in the payment of any amount or other performance due under the Note or the Security Agreement of even date between Alloys, Inc. and the Mortgagee, the Stock Pledge Agreement of even date herewith between James P. Poe and the Mortgagee, the Collateral Pledge Agreement of even date herewith between James P. Poe and the Mortgagee, the other Second Priority Accommodation Mortgage of even date between the Mortgagor and the Mortgagee, or this Mortgage, then, upon demand of the Mortgagee, the Mortgagor will pay to the Mortgagee the whole amount due and payable under the Guaranty; and in case the Mortgagor shall fail to pay the same forthwith upon such demand, the Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Mortgagee's agents and attorneys.

3.12 Delay or Omission No Waiver. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

3.13 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Mortgagee (a) grants forbearance of an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of the Mortgage or otherwise changes any of the terms of the Note or Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, Mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Mortgagee, without notice to any person or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as he might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

3.14 Discontinuance of Proceedings - Position of Parties, Restored. In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case, the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding has been taken.

3.15 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE IV

4.01 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or by or on behalf of Mortgagee shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

4.02 Headings, etc. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

4.03 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note shall be in no way affected, prejudiced or disturbed thereby.

ARTICLE V


5.01 Changes, Alterations and New Construction by the Mortgagor. (a) Mortgagor shall have the right to make at any time and from time to time during the term of this Mortgage, at its cost and expense, changes, alterations and expansions to the building on the Mortgaged Property; subject, however, in

all cases, to the following: (i) no change or alteration shall be undertaken until the Mortgagor shall have procured and paid for all required permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction; (ii) any change or alteration shall be made promptly and in good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards, and offices, and in accordance with the orders, rules and regulations of the Board of Fire Insurance Underwriters and any other body hereafter exercising similar functions having jurisdiction over the Mortgaged Property; (iii) the cost of any such change or alteration shall be paid by the Mortgagor, so that the Mortgaged Property shall at all times be free of liens for labor or materials supplied or claimed to have been supplied to the Mortgaged Property; (iv) any such change or alteration shall immediately upon incorporation into the Mortgaged Property be and become subject to this Mortgage.

(b) Alterations. Notwithstanding anything to the contrary contained herein, without Mortgagee's prior written approval, Mortgagor shall not make any alteration or change to the Mortgaged Property which would reduce the value thereof or decrease the size of or impair the structural integrity of any building comprising a part of the Mortgaged Property.

5.02 Junior Mortgages. Mortgagor will not further mortgage or encumber the Mortgaged Property unless said further mortgage or encumbrance is subordinate to this Mortgage, and any insubordinate financing which is not expressly subordinate to this Mortgage will be void and of no force and effect.

IN WITNESS WHEREOF, the Mortgagor has executed this Second Priority Accommodation Mortgage on the date first above written.


JAMES P. POE


LALA ANN POE

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that JAMES P. POE, an individual whose name is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said Mortgage, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26 day of June, 1987.

Cathy A Loggins
Notary Public

My Commission Expires: 8-14-89

BOOK 138 PAGE 651

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that LALA ANN POE, an individual whose name is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said Mortgage, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26 day of June, 1987.

Cathy A Loggins
Notary Public

My Commission Expires: 8-14-89

THIS DOCUMENT PREPARED BY:

W. Clark Watson
Leitman, Siegal, Payne & Campbell, P.C.
425 First Alabama Bank Building
Birmingham, AL 35203
(205) 251-5900

EXHIBIT "A"

Lot 10, Block 2, according to Amended Map of Plantation South, First Sector,
as recorded in Map Book 7, page 173 in the Probate Office of Shelby County,
Alabama.

BOOK 138 PAGE 652

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1987 JUN 30 PM 3:51

Thomas A. Hamilton, Jr.
JUDGE OF PROBATE

1. Dead Tax	\$	
2. Mtg. Tax		<u>225.00</u>
3. Recording Fee		<u>40.00</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>266.00</u>